SHL
WITHDRAWN

APPRENTICESHIP AGREEMENTS .. .. p. 223
TEMPORARY ILLNESS AND WAGES .. .. p. 224

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The Solicitors' Journal

VOL. LXXVII. **Saturday, April 1, 1933.** No. 13

Current Topics: Lords of Appeal as Judges of the High Court — An often Overlooked Point—Income or Capital Asset — Habitual Criminal —Licensed Premises and Goodwill —Compensation or New Lease .. 221
Criminal Law and Practice 223
Apprenticeship Agreements 223
Temporary Illness and Wages .. 224
A Toll Survival 226
Rates of Exchange and Investments Abroad 226
Company Law and Practice 227
A Conveyancer's Diary 228
Landlord and Tenant Notebook .. 229
Our County Court Letter 230
Reviews 230
Books Received 231
Points in Practice 232
Correspondence 233
In Lighter Vein 234
Obituary 234
Notes of Cases—
Rhodesia Railways Ltd. *v.* Collector of Income Tax of Bechuanaland Protectorate 235
Newte *v.* Newte and Kew .. 235
Rex *v.* Evan Jones .. 236
Table of Cases previously reported in current volume 236
Parliamentary News 236
Rules and Orders 237
Societies 238
Legal Notes and News 239
Court Papers 240
Stock Exchange Prices of certain Trustee Securities 240

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Current Topics.

Lords of Appeal as Judges of the High Court.

By s. 3 of the Judicature Act, 1925, reproducing an earlier statutory provision to the same effect, the Lord Chancellor is empowered to request any person who has formerly held the office of a judge of the Court of Appeal or of a judge of the High Court, to sit and act as a judge of the High Court; and by s. 6, which deals with the constitution of the Court of Appeal, there is included among the *ex-officio* judges of that tribunal any person who has held the office of Lord of Appeal in Ordinary who at the date of his appointment would have been qualified to be appointed an ordinary judge of the Court of Appeal, or who at that date was a judge of that court. It was a wise step thus to enlarge the judicial reserves of the High Court and of the Court of Appeal, especially of the King's Bench Division, which, in view of the periodical claims of assize work, becomes depleted to a serious extent. Recently, it will have been observed, Lord Tomlin and Lord Wright have given their services to assist in clearing the lists. Both these learned lords, it will be noted, come within the enabling words of s. 3 of the Act of 1925, each having been at one time a judge of the High Court. Each would also have been qualified to sit in the Court of Appeal by reason of being a Lord of Appeal who at the date of his appointment to that office was qualified to be an ordinary judge of the Court of Appeal. It will be observed, however, that the language of s. 6 does not constitute each holder of the office of Lord of Appeal an *ex-officio* member of the Court of Appeal. Neither Lord Thankerton nor Lord Macmillan is an *ex-officio* member of that court, inasmuch as neither was at the date of his appointment qualified to be an ordinary member of the Court of Appeal, neither having been a member of the English Bar. Nor does it follow that every Lord of Appeal, even though he happened to be a member of the English Bar before his promotion, would be entitled to sit as a judge of the High Court. Both Lord Macnaghten and Lord Carson were appointed Lords of Appeal direct from the Bar, and thus would not have satisfied the conditions necessary to entitle them to act as judges of the High Court, although they would have been eligible to sit in the Court of Appeal. The exclusion of the Scottish Lords of Appeal seems eminently reasonable, as presumably, they would be unfamiliar with the practice and procedure of the High Court, but this logical objection seems to be without much validity when we consider that these eminent judges are entitled to take part in the hearing in the House of Lords of appeals from the same courts, with whose procedure they are presumed to be unacquainted. As the late Lord Halsbury once said, English law is not logical, and of the truth of this dictum we have many examples.

An often Overlooked Point.

It is a curious fact that the complete voidness of a contract held to be in unreasonable restraint of trade is not generally realised. Everyone, however remotely connected with the law, knows that such a contract is void against the party who has imposed the restraint, but it comes as a surprise to many that either party to such a contract can plead that it is void. Naturally there are comparatively very few cases of such a plea by the restraining party, and the earlier authorities scarcely bear out the view of the law just stated. However, an instance of such a plea came before the Court of Appeal recently. In *Wyatt* v. *Kreglinger & Fernau* [1933] W.N.51; 49 T.L.R. 264, a firm agreed to give a retiring employee a pension of £200 per annum, the agreement continued: "You are at liberty to undertake any other employment, or enter into any business on your own account, except in the wool trade, and the only other stipulation we attach to the continuance of this pension is that you do nothing to our detriment (fair business competition excepted)." The pension was discontinued and the firm pleaded in reply to an action brought on the agreement by the employee that the contract was void as being in restraint of trade, and this plea was unanimously upheld by the Court of Appeal. In so holding they over-ruled the old case of *Bishop* v. *Kitchin*, 38 L.J., Q.B. 20. In this case a very strong court, presided over by Cockburn, C.J., had refused to listen to the employer's plea that he was released from his contract because it was void as being in restraint of trade. They held that as the plaintiff had performed his part of the contract, he was entitled to recover the consideration in respect of it. The correctness of this old decision had gone unchallenged for nearly seventy years except for some remarks by Scrutton, L.J., in *Joseph Evans & Co., Ltd.* v. *Heathcote* [1918] 1 K.B. 418. The decision of the Court of Appeal in *Wyatt* v. *Kreglinger and Fernau, supra,* will bring home the fact that the real ground of the voidness of contracts in restraint of trade is not that they bear hardly upon the employee, but that they are contrary to public policy as tending to deprive the State of a man's work in that sphere for which he is most fitted.

Income or Capital Asset.

The determination of whether a receipt of money or money's worth is in the nature of *income*, or whether it amounts to the acquisition of a capital asset has been a matter of extreme difficulty in almost innumerable revenue cases. One writer on this admittedly involved subject has expressed the view that he could reason with equal facility and equally forcibly in favour of either side of the question in respect of any disputed receipt of this character. An interesting company

case apparently of this nature, and which Mr. Justice FINLAY described as important, came before his lordship on the first day of this term (*H. Trenchard, as Liquidator of the National United Laundries (Greater London) Ltd.* v. *H. P. Bennet (H.M. Inspector of Taxes)*, 77 SOL. J. 83). The main facts, briefly, were that in consideration of the allotment to company A by company B of £12,500 worth of deferred shares of company B, company A undertook to guarantee the payment of the dividend on the 7 per cent. preference shares of company B. Company A, the judge said, was in substance a holding company, and the question was whether the £12,500 worth of deferred shares received by company A in respect of its guarantee was income and assessable to tax under the provisions of Case VI, Schedule D, of the Income Tax Act, 1918. The Commissioners for the Special Purposes of the Income Tax Acts held that the £12,500 was not a trading receipt; that it could not correctly be described as promotion profit, but that, nevertheless, it was a receipt "in the nature of income" and was liable to tax. That decision Mr. Justice Finlay reversed, holding that what company A was in fact doing in the circumstances of this case was to acquire a controlling interest in company B by means of the purchase of a block of shares, and that the giving of the guarantee was the method of paying for the shares acquired. What company A was thus acquiring, said his lordship, was a capital asset. A little careful consideration reveals some of the obvious yet subtle difficulties of this case which, as the judge pointed out, is not free from doubt. One readily appreciates that when for the £12,500 company A gave the guarantee it shouldered an uncertainty in that it might or might not be called upon to fulfil the guarantee in whole or in part. The risk it took had, therefore, a potential value, but need not necessarily have resulted in being at all proportionate to the £12,500 paid for undertaking it—nothing, indeed, might have been called for. In this light, with respect, it seems difficult to accept the view that company A was purchasing a capital asset, rather one might think of the transaction as speculative with the consideration received for the risk undertaken as income in the hands of the guarantor.

Habitual Criminal.

A CRIMINAL law point of some interest in connection with a conviction as a habitual criminal was considered by the Court of Criminal Appeal recently. The appellant had been charged on an indictment containing four counts charging him with obtaining money by false pretences, to which he pleaded guilty, and also containing a count charging him with being a habitual criminal, to which he pleaded not guilty. The statutory notice in connection with the habitual criminal charge which had been served on the appellant by the Director of Public Prosecutions alleged the commission by the appellant of crimes of which he had never been convicted and which he had not admitted. That insertion in the statutory notice of unproved and unadmitted crimes was objected to at the trial, and, reliance being placed on the case of *H. Jones* [1922] Cr. App. R. 124, the jury were discharged without giving a verdict. Shortly afterwards the appellant was tried in respect of the alleged offences referred to in the statutory notice, to which he pleaded guilty, and he was also found guilty of being a habitual criminal and sentenced to three years' penal servitude and five years' preventive detention. On appeal it was contended for the appellant that at the first trial the jury ought not to have been discharged, but that the trial should have proceeded on the remainder of the allegations contained in the notice. Lord HEWART, C.J., said that in the court's view the first trial should have been proceeded with upon the particulars as they stood, the particulars not being open to the objection which was alleged. In short, then, the statutory notice required by s. 10 (4) of the Prevention of Crime Act, 1908, may include an allegation that the accused has committed a crime, although he has not admitted having committed it or has not been convicted of it. The necessity of imposing a term of penal servitude on habitual criminals is a matter which has frequently aroused judicial comment. Some time ago the Recorder (Sir ERNEST WILD, K.C.) in passing sentence of three years' penal servitude and five years' preventive detention on a man found to be a habitual criminal explained that those were the minimum sentences allowed by the law. "The Lord Chief Justice and other judges," he added, "had asked to be enabled to pass sentences of ordinary imprisonment instead of penal servitude on habitual criminals, but they won't do it. They haven't time to consider these things. We have to pass a sentence of penal servitude to impose preventive detention." In another case about the same time the Court of Criminal Appeal said that they would definitely lay it down that when persons were charged with being habitual criminals they should be tried separately. In that case it was apparent that confusion arose because three men were tried together. Their names and aliases were mixed, and it might well be, Mr. Justice AVORY pointed out, that all three were branded with the same stigma when each of their cases should have been tried on its merits. The convictions in that case as habitual criminals were quashed.

Licensed Premises and Goodwill.

DISMISSING the appeal by the tenant of licensed premises who had claimed in respect of goodwill under the Landlord and Tenant Act, 1927, the Divisional Court held that the proviso (*c*) to s. 4 (1), "In the case of licensed premises the sum payable for goodwill . . . shall not include any addition to the value of the premises attributable to the fact that the premises are licensed premises" contemplates a distinction between tenants whose businesses consist exclusively in the sale of exciseable liquor and tenants who supply and provide other commodities and services, and that the former class can never qualify for compensation or new leases: *Simpson* v. *Charrington & Co., Ltd.* (*The Times*, 21st March). Mr. Justice ACTON arrived at this conclusion with some doubt, which arose from the obscure wording of the clause; and the argument put forward on the part of the appellant, that the statute left some room for rewarding a particularly active tenant whose efforts had contributed to the goodwill, was undoubtedly an attractive one. The word "attributable" occurs in the proviso (*b*) to s. 1 (1) of the Workmen's Compensation Act, 1925: "if it is proved that the injury to the workman is attributable to the serious and wilful misconduct, etc.," and this proviso has been held to apply if misconduct were merely a cause, though other causes had contributed.

Compensation or New Lease.

WHAT is perhaps regrettable from the practitioner's point of view is that when dealing with the above case the court declined an opportunity of giving guidance on a very difficult question: must a tenant who considers himself qualified to claim monetary compensation, and also qualified to claim a new lease, "elect," and if so, when? Most writers on the subject say he must, and some say at the very outset. It is now clear, from *Smith* v. *Metropolitan Properties Co.* [1932] 1 K.B. 314, that the two claims can never be heard together, for that authority decided that proceedings for a new lease must be launched before, but proceedings for compensation in cash cannot be commenced till after, the expiration of the lease. But the period for giving notice of intention to claim is the same in each case, and we have yet to learn what will happen to a tenant who gives notice of claim in the alternative (despite the "in lieu of claiming such compensation" in s. 5), and to one who sends separate notices, together or successively, and/or to one who, after failing to establish a case for a new lease, takes proceedings for monetary compensation.

Criminal Law and Practice.

KING'S EVIDENCE.

THE words at the head of this article have been made familiar to us, more probably, by the old-fashioned detective story writers (who invariably relied upon someone "turning King's evidence" to get them out of the difficulties of proof of the crime in a criminal court) than by anything that we have read in legal text-books. Nevertheless, the expression is an old one, dating probably from early Georgian times, when it was difficult, on occasion, for example, to convict a Jacobite except with the aid of an accomplice.

A criminal case which is occupying a great deal of attention at the present time, and in which the prosecution is relying on the evidence of an accomplice, prompts us to consider briefly what is the law with regard to the reception of such testimony.

In cases which come before magistrates the practice, where, without the evidence of the accomplice no *primâ facie* case would be made out, is to discharge the accomplice (if in custody) and to take his deposition in the ordinary way. The witness must, of course, be cautioned that he need not say anything which may incriminate himself. It is settled that no magistrate may offer anything in the way of a pardon to an accomplice in order to obtain his evidence for the prosecution. Where the matter is before the higher criminal courts, and the Crown desire to call an accomplice as a witness for the prosecution, it is now customary either (*a*) not to include him in the indictment, or (*b*) to take his plea of guilty upon arraignment (*R.* v. *Winser*, L.R. 1 Q.B. 289, 390); or during the trial if he withdraws his plea of not guilty (*R.* v. *Tomey*, 2 Cr. App. R. 329); or before calling him either (*c*) to offer no evidence and allow him to be acquitted, or (*d*) to enter a *nolle prosequi* (*R.* v. *O'Connor*, 4 St. Tr. (N.S.) 935).

The principle of allowing an accomplice to give evidence against his associates seems to be based upon the reasoning that being himself freed from any fear of punishment, he can have no interest in perverting the truth. Such testimony has, however, always been received with extreme caution. There is no rule of law that the evidence of an accomplice must be corroborated, and it is the duty of the judge so to inform the jury. The jury must nevertheless be warned that it is always dangerous to convict on such evidence unless it is corroborated. If the judge neglects to warn the jury of this danger, the court will quash the conviction. Where the warning has been given and the jury convict, the conviction will not be quashed merely on the ground that the evidence of the accomplice was uncorroborated. Such a conviction is treated like any other and will be upset only if the court considers the verdict "unreasonable" or that it "cannot be supported having regard to the evidence" (see *R.* v. *Baskerville* [1916] 2 K.B. 658, and s. 4 (1) of the Criminal Appeal Act, 1907).

Corroboration must be by some evidence other than that of another accomplice, and it is not enough if it goes no further than that of such other accomplice, for then there would be no necessity to call the first accomplice at all. It must be evidence which connects the accused with the crime and which confirms in some material particular, not only the evidence given by the accomplice that a crime has been committed, but also the evidence that the accused has committed it.

There may, of course, be corroboration in the prisoner's own evidence or in his conduct. The fact that he made no denial when charged with committing the crime does not, however, amount to corroboration (*R.* v. *Whitehead* [1929] 1 K.B. 99; compare, however, *R.* v. *Feigenbaum* [1919] 1 K.B. 431). Corroborative evidence need not necessarily be direct; it may be circumstantial.

The evidence of one accomplice cannot be corroborated by that of another (*R.* v. *Baskerville, supra*). It was for some time doubted whether the wife of an accomplice could give confirmatory testimony but in *R.* v. *Willis* [1916] 1 K.B. 933, it was held that the wife of an accomplice is not necessarily an accomplice and that her evidence therefore may be good corroboration.

A police spy is not an accomplice nor is an *agent provocateur* (see *R.* v. *Bickley*, 73 J.P. 239; and *R.* v. *Heuser*, 6 Cr. App. R. 76).

It may, perhaps, be not without interest to add that the expectation of pardon which anyone turning "King's evidence" may have held out to him does not in any circumstances amount to a right, either as to the particular offence in question or as to other offences which he may have committed.

Apprenticeship Agreements.

A RECENT (unreported) case in the Court of Appeal involved some interesting points of law bearing on the relationship between master and apprentice; and, although the case in question did not involve the decision of any new point, it necessitated reference to a number of cases bearing upon contracts of service in which special considerations are superimposed upon the ordinary relations of master and servant or of employer and employee.

In the case referred to the agreement was antedated—an unusual proceeding, which drew from Scrutton, L.J., who presided over the court, the remark that he had never known of this being done before in an apprenticeship deed. The apprentice—a minor— had been employed by the defendants, a firm of printers, for several years, during which time he had become more or less familiar with the machines in use. An agreement was then made between himself and guardian and the firm by which he was apprenticed to them for five years—antedated for about a year. A progressive salary was provided which, during the last year of the period, would practically be equivalent (so it was said) to the wages of a journeyman printer. The agreement contained the usual provisions as to tuition; and there was a clause providing that the agreement might in certain eventualities be terminated by one month's notice. Some eighteen months before the agreement would have expired an incident occurred as a result of which the apprentice was summarily dismissed.

An action for damages for wrongful dismissal followed, and the jury found that the dismissal was not justified, and that the incident alleged would not have justified even the giving of the month's notice provided for in the agreement. They accordingly awarded as damages (A) the amount of wages which would have been earned by the plaintiff between the date of dismissal and the date upon which he secured fresh employment but at a reduced wage, plus; (B) a sum of £300 in respect of a further period of six months to the date of expiry of the agreement based on the diminished wage then being earned. (This was £45, the balance of £255 being damages expressed to be in respect of loss of tuition and opportunity.) The Court of Appeal holding that the damages were excessive and that the jury had gone beyond "tuition" into matters upon which there was no evidence, reduced this sum of £300 to £145, directing the respondent to pay the costs of the appeal. Now an apprenticeship agreement is, in substance, an agreement of service, though in fact the apprentice is not a servant. Under the old poor law conditions it was often a question whether a particular contract was intended to be in the nature of an apprenticeship or of a hiring and service; and in such case the decision rested upon the intention of the parties as collected from the agreement in its entirety. In *Rex* v. *Eccleston Inhabitants* (1802), 102 E.R. 382, a pauper agreed to serve a weaver for a year and a-half on condition that he was to be taught to weave and have half his earnings to keep himself upon. The court held in that case that the pauper gained a settlement by hiring and service the intention of the

parties being to create the relationship of master and servant and not a contract of apprenticeship. A hundred years later, in *Horan* v. *Hayhoe* [1904] 1 K.B. 288, where an agreement had been entered into between the parties by which a youth was to be taught riding in return for services the court (Lord Alverstone, C.J.) on appeal from justices held that the agreement was a contract of apprenticeship the object being that the youth should be taught to be a riding groom and not merely that he should be employed as a stable-boy.

It is, however, necessary that teaching shall be the primary object in view to create an apprenticeship agreement; and there are cases in which the court has held that, despite the presence of an express stipulation that the servant shall be "taught" or "instructed," the contract is of service only: see *R.* v. *Northowram Inhabitants* (1846), 9 Q.B. 24. There are also cases in which, although the contract is specifically stated to be one of apprenticeship, the remuneration of the apprentice towards the end of the period becomes so substantial that the primary object would seem to be submerged under that of service. These distinctions are important as bearing upon the mutual rights of the parties; for although in most respects the relationship is the same as in a contract of service, there are certain exceptions. Thus a master can never "dismiss" his apprentice except where the conduct of the latter is such as to make it impossible to teach him (*Learoyd* v. *Brook* [1891] 1 Q.B. 431); nor can the apprentice repudiate his agreement unless the court is satisfied that such repudiation was for his own benefit.

Although the payment of a premium for instruction is often an important factor in determining the amount of damages recoverable from an employer who, without legal justification, breaks the agreement, it is not an *essential* factor. The modern tendency is in the direction of the abolition of premiums, the value of the instruction being set off by services rendered. In a very large number of cases not only is there no payment of premium, but the agreement provides (as in the case referred to at the commencement of this article) for a wage to be paid to the apprentice, increasing in proportion to his efficiency, and amounting toward the end of the term to the wage of a competent workman. The question then arises, what is the measure of damages in which an employer may be mulct if he improperly terminates the agreement?

Where there is a clause providing for the termination of the agreement in certain eventualities at, say, one month's notice it is important that the employer should satisfy himself that the reason or reasons for which he proposes to give notice do properly come within the ambit of the eventualities prescribed. Thus, supposing "wilful misconduct" be set down as a reason for giving a month's notice, then the conduct complained of must be such as might reasonably be described under that epithet. If not, the damages recoverable will not be limited to a month's salary, but other considerations may be imported.

In the recent case before the Court of Appeal, the apprentice was dismissed summarily and without even being given the month's notice which the agreement provided. The sole question, therefore, was as to the measure of damages, if any. The jury having come to the conclusion that the conduct complained of did not even justify discharge with a month's notice, the plea that a month's wages only were the damages failed, and the court held that the plaintiff was entitled to be placed in the same position in all respects as he would have been had no breach taken place. That meant payment of wages calculated up to the end of the agreed term (less earnings during the period after summary discharge) plus an appropriate sum for loss of tuition over the whole period of the eighteen months uncompleted. In the absence of evidence to prove any other specific deprivation (such as may have been in the mind of the jury though not expressed) the court reduced the damages as stated.

In the case of *Maw* v. *Jones* (1890), 25 Q.B.D. 107, an apprentice engaged at weekly wages was summarily dismissed. It was there laid down that the damages were not to be confined to one week's wages, but that the true measure was the whole loss sustained by the apprentice, account being taken *inter alia* of the difficulty he might have in obtaining employment elsewhere. But this decision was reviewed by the House of Lords in *Addis* v. *Gramophone Company, Ltd.* [1909] A.C. 488, where it was laid down that when a servant is dismissed from his employment the damages for the dismissal cannot include compensation for the manner of the dismissal, for his injured feelings, or for any loss he may sustain from the fact that the dismissal of itself makes it more difficult for him to obtain fresh employment. The judgment of Lord Loreburn and four other Lords of Appeal all contained references to *Maw* v. *Jones*, and all agreed in regard thereto that it went beyond what was permissible. Lord Gorell in particular made reference to any attempt to "turn an action for the loss of the benefit of a contract into an action of tort."

But it is conceivable that in some circumstances an apprentice might be entitled to recover in respect of what may be termed loss of status. It is notorious that in certain trades the inability to produce the record of a definite apprenticeship may involve a permanently lower status and with it an appreciable loss of earning capacity. So far as is known to the present writer, no apprenticeship case is on record in which damages have been awarded under this heading; and against that is the fact that a broken term of apprenticeship may be healed by completion of the term under a new employer. The matter would, however, be dependent upon the available evidence, and the measure of the damages to be awarded under that heading (if at all—having regard to the decision in *Addis* v. *Gramophone Company, Ltd.*) would not be easy to determine.

Temporary Illness and Wages.

When considering the effect of illness on a servant's right to wages, it is necessary to bear in mind that conditions have altered, in two respects at least, since the principles governing the matter were first laid down. For one thing, the Industrial Revolution has had the effect that most servants are now on weekly contracts, whereas formerly the "hiring" was usually, and was indeed presumed to be (*Co. Litt.* 42B), for a year, and this principle was held not to be limited to agriculture in *R.* v. *St. Andrew in Pershore* (1828), 8 B. & C. 679. Secondly, the statutory enactments relating to health insurance and workmen's compensation have been passed.

The oldest authorities were largely concerned with the question whether the *relationship* of master and servant was determined by the incapacity of the servant resulting from illness. A number of pauper settlement cases, of which *R.* v. *Inhabitants of Islip* (1721), 1 Stra. 423, may be considered a representative example, decided that it was not; without, of course, giving any direct guidance as to the right to remuneration. Indeed, in that case the servant had agreed to accept a proportionate reduction, and the point at issue was whether his year's service had been interrupted so as to prevent him from acquiring a settlement. But one passage in the judgment of Pratt, C.J., is perhaps significant for present purposes: "A servant that lies under the visitation of God, which befals him not through his own default, is and must be taken to be all the while in the service of his master."

Nineteenth century authorities carry the matter further, and show that, in the absence of stipulations to the contrary, it is no answer to a servant's claim for remuneration to say that he was "absent sick." *Ex p. Harris, Re Closson* (1845), De G. 165, was a claim in bankruptcy by a law stationer's manager, who had been absent from work, suffering from asthma, for three months; the claim was allowed, but the decision is not as conclusive as it might be, as it appeared

that the employer had requested the claimant to stay at home. It is worth noting that the whole argument advanced by the trustee was that the claimant was not an employee at all during the period. The operation of an express provision was illustrated by *Inglis* v. *East-India Company* (1851), 18 L.T. (o.s.) 93, the plaintiff having been engaged "for five years if he should so long live and be able to perform and actually perform the services of an engineer," and "upon the like condition, and not otherwise," he was to receive salary; clearly dependent covenants, and though the company had not dismissed the plaintiff on his falling ill, and had in fact paid him an allowance of one-fourth of the agreed salary for 2½ years, his claim failed.

Then came the leading case of *Cuckson* v. *Stones* (1858), 1 E. & E. 248. The facts were that the plaintiff had been engaged by the defendant in 1854 for a term of ten years, as a brewer. The contract gave him a house and coals and a weekly salary of £2 10s. At the end of 1857 he fell ill and was laid up till July, 1858, but was able to give expert advice to the defendant, who called from time to time. After March the defendant refused payment of salary. In defence to the claim, the defendant pleaded that the plaintiff was not ready and willing to perform his contract, and the point was argued on demurrer. Lord Campbell's judgment expressed the following principle: "In an action for not accepting goods purchased, issue being joined on a plea that the plaintiff was not ready and willing to deliver them, the defendant would be entitled to a verdict on proof that the plaintiff never was in possession of the goods he undertook to deliver. But looking to the nature of the contract sued upon in this action, we think that want of ability to serve for a week would not of necessity be an answer to a claim for a week's wages, if in truth the plaintiff were ready and willing to serve had he been able to do, and was only prevented from serving during the week by the visitation of God, the contract never having been determined."

This decision lays down a distinction between goods and services from the point of view of the law of contract, and approaches the problem from substantially the same angle as that of Pratt, C.J.'s judgment in *R.* v. *Inhabitants of Islip*, *supra*. But, while both recognise the continuance of the relationship and with it of the right to wages, it must be remembered that Pratt, C.J., was not dealing with an employer's rights, and that Lord Campbell was dealing with a point of pleading. They do not exclude the possibility of an employer, put to some expense by the failure of the servant to do his work, having some remedy against him.

As to whether an employer could counter-claim against a servant who had not done his work owing to illness, which would bring about a position analogous to that of a tenant whose landlord has broken a landlord's covenant to repair (no answer to a claim for rent), there are opposing dicta. In an insurance case, *Jackson* v. *Union Marine Insurance Co.* (1874), 23 W.R. 169, Bramwell, B., illustrating the commercial doctrine of frustration, said: "A enters the service of B, is ill, and cannot perform the work. No action lies against him." As against this, there is a dictum of Blackburn, J., in *Bettini* v. *Gye* (1875), 1 Q.B.D. 183, an action, not for wages, but for refusal to carry out a contract to employ, by a singer who had been absent from rehearsals owing to illness and dismissed on that ground. The validity of a plea of "not willing and ready" was argued on demurrer, and, allowing the objection, Blackburn, J., said: "The defendant must, therefore, we think, seek redress by a *cross-claim for damages*."

This conflict emphasises the importance of knowing why temporary illness does not deprive a servant of his right to wages, i.e., whether it is because there is no implied term to that effect, and the promises are independent, or because illness is an instance of *vis major*, discharging the contract. On the whole, Blackburn, J.'s opinion would appear to have more force, because the context of Bramwell, B.'s dictum, which will be quoted later, suggests that he had in mind permanent rather than temporary illness.

Cuckson v. *Stones* was followed in *Warren* v. *Whittingham* (1902), 18 T.L.R. 508, despite the fact that the servant, engaged for five years, was under express covenant to devote his whole time to his work.

The other cases of the present century deal with weekly wage earners and illustrate the effect of insurance schemes, private and public. In *Elliott* v. *Liggens* [1902] 2 K.B. 84, the employee had been incapacitated by accident entitling him to workman's compensation, which was paid, and he sued for the difference between that and his wages. Without examining the question of implied agreement, the court held that his conduct had been inconsistent with the view that he was still entitled to the agreed remuneration; Channell, J., actually used the word "estopped." The "estoppel" suggestion was not a considered sound one in *Warburton* v. *Co-operative Wholesale Society Ltd.* [1917] 1 K.B. 663, C.A., but the Court of Appeal approved this and the next mentioned case as "good sense," basing its opinion on the proposition that there is an *implied contract* in these cases.

In *Niblett* v. *Midland Rly. Co.* (1907), 96 L.T. 462, the facts were that the plaintiff had been obliged by the company's rules to join the Midland Railway Friendly Society (to the funds of which the company contributed), and during a short period of illness in 1904 he had drawn sick pay from the society and not asked for wages; next year he fell ill again, and after several months of sickness was given notice. He then claimed wages in respect of that period. The court, without much hesitation, came to the conclusion that the general principles contained in the older cases did not fit the circumstances of this one, and that the true contract between the parties was that, when absent ill, the plaintiff should be entitled only to sick benefit from the friendly society. (Note that the plaintiff had been properly dismissed; that a weekly wage earner absent through sickness and not claiming wages, but receiving sick pay from his friendly society, is entitled to a week's notice, was decided in *Carr* v. *Hadrill* (1874), 39 J.P. 246; and *Warburton* v. *Co-operative Wholesale Society Ltd.*, *supra*, is further authority for the same proposition.).

And a similar question came before the Manx Court of Appeal in a case reported in *The Times* (17th March). The Plaintiff claimed the full amount of wages in respect of a period during which she had been absent ill and had received sickness benefit under the National Health Act, 1920. She made no claim, however, in respect of meals and fares provided under the contract. The Deemster had allowed the claim. The Court of Appeal considered the point as hitherto undecided, but approached the matter from the broad viewpoint of the principles of contract: what was in the contemplation of the parties when the bargain was made? Both parties were presumed to know the law, and it must have been contemplated that the plaintiff, if ill, should draw sickness benefit under the scheme, to which the employer contributed. The judgment of the court below was reversed accordingly.

In the same case the plaintiff was awarded nominal damages for wrongful dismissal, as she had not been given a week's notice, and the circumstances of the plaintiff's illness were not "such as justified summary dismissal." This raises another question: what is the effect of an illness so serious as to render further service impossible? The dictum of Bramwell, B., in *Jackson* v. *Marine Insurance Co.*, *supra*, continues: "B may hire a fresh servant . . . if his (A's) illness would put an end, in a business sense, to their business engagement, and would frustrate the object of that engagement; a short illness would not suffice"; and this suggests that the contract is automatically discharged by impossibility. But as against this, it was said in *Poussard* v. *Spiers* (1876) 1 Q.B.D. 410, that illness of that nature entitled the employer to rescind; in view of which, and of the Manx case, it would appear that at least a summary notice is advisable.

A Toll Survival.

THE "hour glass" sale held recently of the year's tolls upon vehicles crossing the bridge over the River Parrett at Burrowbridge, Somerset, reminds us of what was up to recent times a serious delay and hindrance to locomotion, though, probably, a necessary evil.

In our days, when our numerous available highways are "repairable by the inhabitants at large," with the aid of grants from the Roads Fund, the need for collecting moneys for their upkeep directly from the actual users in each instance has passed away. Formerly, however, when it was, in effect, nobody's business to provide suitable thoroughfares, privileges had naturally to be given to those who allowed their land to be used for passage over or to those who kept in repair for public use a way, ferry or bridge.

There were two classes of tolls under the common law, depending on grant, actual or presumed, from the Crown—"tolls traverse" and "tolls through." The first arose where a passage over land was dedicated to the public on the condition that a toll was paid to the owner. The second impost was based on the duty which lay on the person exacting it to repair a highway or bridge. In the case of turnpike roads, the tolls were leviable under statutory authority, the said roads being repairable by their trustees or proprietors. These roads were created by Turnpike Acts with the object of relieving local inhabitants of the expense of the upkeep of main roads. The last Turnpike Act expired in 1896, and modern Road Acts legislation has endeavoured to distribute more evenly the burden of providing for the maintenance of the "disturnpiked" main roads.

Highway tolls are now practically obsolete; but bridge tolls still remain in some places. Those still existing are, as a rule, enforceable under Special Acts which must be referred to for their incidence and amount.

The King, his horses and carriages, are exempted from toll by common law.

By the Army Act, 1881 (44 & 45 Vict., c. 58), s. 143, and the Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), s. 28, our military forces, horses, baggage and stores are exempt whilst on duty, on the march or going to or returning from training.

The County Police Act, 1840, forbids tolls to be taken from police, their vans or carts where "the constable in charge is the Chief Constable, or is in uniform, or holds a written order from the Chief Constable."

The Post Office Act, 1908, exempts any mail, or person, carriage or horse conveying or collecting mail.

The General Turnpike Act (3 Geo. 4, c. 126), contained a number of exemptions, mostly in favour of local interests. For example, a "rector or curate, going to or returning from visiting any sick parishioners or other his parochial duty within his parish," was free of toll.

A heterogeneous collection of exemptions due to the Act cited and to numerous cases decided in the early and middle part of the last century exonerated "seafaring persons" and, *inter alia*, fodder for cattle, agricultural produce, animals going to pasture, manure and instruments of husbandry. The difficulty of "putting new wine into old bottles" was exemplified by the dispute which arose at the beginning of this century as to whether a cycle was a "carriage" under a Toll Act: *Cannon* v. *Abingdon* [1900] 2 Q.B. 66, and *Simpson* v. *Teignmouth and Shaldon Bridge Company* [1903] 1 K.B. 405, C.A.

When the sands ran out at the recent toll auction in Somerset (of what is the only toll-bridge now existing in the "cider county") the successful bidder acquired the rights for £1,250. As £1,280 was paid for rent last year, it may be assumed that the traffic over the bridge in question is extensive and that the local immunities from toll are few.

Rates of Exchange and Investments Abroad.

THE variation in dividends, owing to the present state of the world's money markets, was illustrated in *Prudential Assurance Co. Ltd.* v. *Adelaide Electric Supply Co. Ltd.* (1933), 77 SOL. J. 100. The defendant company, although registered in England, carried on business only in Australia, and (in 1921) it had resolved that (*a*) only formal matters—as required by statute—should be dealt with in England; (*b*) all dividends were to be declared in Australia, but might be transmitted to members residing in England. The plaintiffs, as holders of certain preference shares, therefore claimed to receive their dividends in sterling (i.e. without deduction in respect of the Australian exchange), but the defendants contended that a shareholder's rights were not enhanced by the fact of his being registered in England. Mr. Justice Farwell held that the defendants were liable *prima facie* to pay dividends to English shareholders in sterling, and the above resolution did not modify this liability. The plaintiffs were therefore entitled to receive their dividends in English currency, as the English and Australian pounds were separate monetary units. Judgment was therefore given for the plaintiffs, with costs.

This judgment was in accordance with the majority decision of the Court of Appeal in *Broken Hill Proprietary Company Limited* v. *Latham and Others* (1933), 77 SOL. J. 29. The plaintiffs (unlike the defendants in the first-named case, *supra*) not only carried on business in Australia, but were also registered there, although they had an office in London. Debentures had been issued under a trust deed, whereby the holders were given the option of claiming repayment either in Australia or London. The question, therefore, arose whether (as the plaintiffs contended) payments in London were to be in Australian currency (converted into sterling at the current rate), or whether such payments should be in sterling, without deduction. Mr. Justice Maugham upheld the latter contention, which was affirmed by Lord Hanworth, M.R., in a judgment dissenting from Lords Justices Lawrence and Romer. The majority of the court, however, stressed the circumstance that the debentures were issued by an Australian company, with the result that the symbol "£" (as used in the resolution and trust deeds) signified Australian pounds. It was further held that (1) the option (as to place of payment) was merely to facilitate the cashing of coupons (and the collection of principal) by debenture-holders, who might find it inconvenient to do so in Melbourne; (2) the election as to payment outside Australia implied no right to payment in a different currency, e.g., the pound sterling. The appeal was therefore allowed, and judgment was given for the plaintiffs, with costs.

The lack of finality on this subject is shown by the fact that both the above cases were subsequent to a decision of the House of Lords, viz., *King Line Limited* v. *Westralian Farmers Limited* (1932), 48 T.L.R. 598. The appellants, being liable for commission on a charter-party, viz., £671, had paid this amount in Australian notes at Freemantle, where their vessel was loaded. The respondents contended, however, that the above sum was payable in sterling, in which currency they were entitled to £872 6s. 1d. Mr. Justice Rowlatt held otherwise, and gave judgment for the appellants, and his decision—although reversed by the Court of Appeal (Lords Justices Greer and Slesser, Lord Justice Scrutton dissenting)—was restored by the House of Lords. Lord Macmillan pointed out that, when the parties intended payments to be made in sterling (or the equivalent thereof at current rates of exchange) they had inserted express provisoes to that effect. The omission was therefore significant in the clause relating to commission, which merely stipulated that 5 per cent. should be payable at the loading port. The difficulty was, however, that the same clause provided that the commission was payable upon the freight, and the latter was to be calculated in sterling. The contention was nevertheless

rejected that, inasmuch as the commission was reckoned on a sum in British sterling, it was also payable in that currency. Lords Tomlin, Warrington of Cliffe, Thankerton and Wright therefore concurred in giving judgment for the appellant defendants, with costs in all courts.

Even a liability for payment in gold may be discharged by means of paper currency, as in *In re Societé Intercommunale Belge d'Electricité; Feist* v. *The Company* (1932), 49 T.L.R. 8. The company was incorporated in Belgium, and (in 1928) had issued a 5½ per cent. gold bond for £100, which was held by the plaintiff. A declaration was therefore asked that the plaintiff was entitled either (1) to payment in gold coin of the United Kingdom, according to the 1928 standard, or (2) to receive such a sum in sterling as would purchase gold of the prescribed standard. Mr. Justice Farwell observed that the document was to be construed according to English law (under which paper currency was legal tender) and was also expressed to secure the payment of £100. It was therefore not possible to say that the bond was for an unascertained sum, or that it was a contract for the payment of bullion, and a declaration was accordingly made that the defendants could discharge their obligation by paying in whatever was legal tender at the time. This judgment has now been upheld by the Court of Appeal (*The Times*, 18th March).

It is noteworthy, that, as stated in *The Times* (23rd January, 1933), the Mixed Court at Cairo has held that the Egyptian Government is liable to pay the coupons of the Egyptian Public Debt in gold. As the Egyptian pound is linked with sterling, the Government claimed the right to pay in sterling, even after the abandonment of the gold standard. The French and Italian Commissioners (of the Caisse de la Dette) relied upon a Khedival decree of 1904, providing for payment in gold without deduction, but the British Commissioner was not a party to the action. It is estimated that the annual cost to Egypt will be increased by £1,500,000, as a result of the above judgment.

Company Law and Practice.

CONTRIBUTORY'S PETITION FOR WINDING UP.

CLXXV.

Can a contributory present a petition for the winding up of a company, and, if so, on what grounds? These are questions which do not, perhaps, very frequently arise, but they may well do so at any time, and it is desirable, in case they do, to have some knowledge on the subject. First, it may be well to make the general statement that the conditions requisite to success in a winding-up petition are different in the cases of a creditor's petition and a contributory's petition—this is recognised by the statute, and further emphasised by the reported cases.

Section 170 of the Companies Act, 1929, is the first section to which reference should be made; after making a general statement to the effect that a petition may be presented by the company or a creditor (including any contingent or prospective creditor) or a contributory it proceeds to qualify that generalisation. So far as necessary for our present purpose, those qualifications are as follows: That a contributory shall not be entitled to present a winding-up petition unless (i) either the number of members is reduced, in the case of a private company, below two, or in the case of any other company, below seven; or (ii) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder. The section also provides that only a shareholder shall present a winding-up petition on the ground of default in filing the statutory report or in holding the statutory meeting. Why the section uses the word "shareholder" here and the word "contributory" elsewhere in the section is not immediately apparent.

"Contributory" as used in the Act is defined in s. 158 as every person liable to contribute to the assets of a company in the event of its being wound up; while the word "shareholder" does not seem to be defined; and in any case "contributory" is rather a misleading word to use in such a connection, for, especially at the present day, the vast majority of members of a company are not liable to contribute to the assets of the company in the event of its being wound up, their shares being fully paid. However, this does not mean that only the holder of shares not fully paid up can petition—a holder of fully-paid shares is a contributory for this purpose, and can present a winding up petition: see *Re National Company for Distribution of Electricity* [1902] 2 Ch. 34.

One curious little point emerges in this connection with regard to female contributories married before the date of the commencement of the Married Women's Property Act, 1882. Section 162 provides that the husband of such a person shall, during the continuance of the marriage, be liable, as respects any liability attaching to any shares acquired by her before that date, to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be a contributory accordingly. The provision in s. 170 as to the necessity of a contributory having held some of his shares for at least six out of the eighteen months before the presentation of the petition would, without anything further, operate harshly on the unfortunate husband who was not a registered holder but was a contributory by virtue of s. 162, and s. 170 (3), therefore, says that if the female contributory's shares have been held by or registered in her name during the appropriate period they are to be deemed to have been held by and registered in the name of the husband.

The court is not at all anxious to encourage a petition by a contributory who is in default to the company, and accordingly a general rule has been laid down (which like all general rules of this nature must be treated with caution, and not as laying down an absolutely inflexible canon) that the court will not hear the petition of a contributory who is in arrear with his calls, unless he pays the amount of them to the company, or into court: *Re Crystal Reef Gold Mining Co. Limited* [1892] 1 Ch. 408.

There is a further restriction on the rights of contributories to petition for winding up; where there is a voluntary winding up, the court must be satisfied, where a contributory petitions, that the rights of the contributories will be prejudiced by a voluntary winding up (s. 255): I may remind my readers that there was a similar provision as regards petitions by creditors which was not renewed when the 1929 Act was designed; there is still, however, the provision (now contained in s. 170 (2)) that the court shall not make a winding-up order on a petition presented where a company is being wound up voluntarily or subject to supervision, unless it is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories.

A holder of a partly-paid share is, of course, much more intimately concerned with the winding up of a company where there is considerable doubt as to its solvency than the holder of a fully-paid share, and the court is more ready to render aid and listen to the former; the latter must make out at least a *primâ facie* case to show that there are some assets which may mean something for him, and if he cannot show assets the petition will be dismissed: *Re Kalso-Slocan Mining Corporation Limited* [1910] W.N. 13. It should be noticed in connection with this case that s. 141 of the Companies (Consolidation) Act, 1908, then provided, as does s. 171 of the Companies Act, 1929, that the court shall not refuse to make a winding-up order on the ground only that the

company has no assets. This section was referred to in argument—but the judgment of Neville, J., as reported, does not deal with that section, but merely says that it is a petition by a fully paid-up shareholder who alleges that the company has no assets and is insolvent, and that in these circumstances the petition must be dismissed with costs. This seems to be going perilously near to refusing to make the order on the ground only that the company has no assets; and there is certainly nothing in s. 171 to suggest that it is inapplicable to a contributory's petition.

One point which I have heard discussed on more than one occasion is this: A body of shareholders being in a minority, are wishful that the company shall be wound up—they are unable to pass any resolution which will have that effect, but the company is losing money, and is likely to continue losing it. At the time when matters have come to a head their capital is still intact, or at any rate there is some prospect that if the company were wound up there would be something left for the shareholders—if the company's existence is continued there will almost certainly be nothing left for the shareholders. What can these minority shareholders do? The answer seems to be, nothing.

Perhaps they may be able to convert other persons to their views, but this seems to be their only hope, for they cannot hope to be successful if they present a petition for winding up. The mere fact that the company is losing money and that the business is being carried on at a loss is not a ground on which the court will make a winding-up order in respect of a company which is not insolvent, at any rate, if the majority of the shareholders do not wish for a winding up: *Re Suburban Hotel Co.*, 2 Ch. App. 737. This is one of the penalties, if you look at it that way, of being a member of a joint stock company, and not an individual trader.

(*To be continued.*)

A Conveyancer's Diary.

Partnership Property and the Transitional Provisions of the L.P.A.

A point of considerable interest and importance upon which there has been a difference of opinion in the profession ever since the commencement of the L.P.A., 1925, has at length been decided by Luxmoore, J., in *Re Fuller's Contract* [1933] W.N. 62.

Shortly, the question is whether land which, before 1926, was conveyed to partners as joint tenants, upon trust for themselves (and other partners, if any) as part of their partnership property, was held upon trust for persons in undivided shares, so that under the transitional provisions in Pt. IV of the 1st Sched. of the L.P.A. the statutory trusts applied.

The nature of the beneficial interest of a partner in partnership property was discussed in *Re Bourne: Bourne* v. *Bourne* [1906] 2 Ch. 427.

In that case the survivor of two partners carried on the partnership business for the purpose of winding up the affairs of the firm. At the death of the deceased partner there was an overdraft with the firm's bankers and moneys were paid in and drawn out by the surviving partner in the name of the firm. The surviving partner eventually deposited with the bank the deeds relating to real estate (which formed part of the partnership property) to secure the overdraft. Although not material for the present purposes, I may mention that it was not disputed that, applying the rule in *Clayton's Case*, the amount owing to the bank at the death of the deceased partner had been paid.

It was contended by the executors of the deceased partner that they had a lien upon the assets on a dissolution and that lien had priority over the charge to the bankers who had notice of the dissolution as they knew of the death of one of the partners.

That led to a discussion as to the nature of the interest which each partner or the executors of a deceased partner has in the partnership property.

On that point the law was stated by the then Romer, L.J., to be: "It is true that in a general sense the executors or administrators of the deceased partner may be said to have a lien upon the partnership assets in respect of his interest in the partnership on taking the partnership account, but that lien is not one which affects each particular piece of property belonging to the partnership so as to affect that property in the hands of any person dealing with the surviving partner in good faith. It is really what one may call a general lien upon the surplus assets . . ." and again: "It is to be borne in mind that the real interest of the partnership in real estate is of a personal character, because wherever the legal estate may be, whether it is in the partners jointly or in one partner or in a stranger, it does not matter: the beneficial interest in the real estate belongs to the partnership with an implied trust for sale for the purpose of realising the assets and for the purpose of giving to the two partners their interest when the partnership is wound up and an account taken."

It seems to follow from that that before 1926 a partner could not be said to have any specific beneficial interest in particular items of the partnership property, but only in the surplus assets available for distribution between the partners on a dissolution. At any rate most of us thought that the partners could not in the usual sense be said to be entitled in equity in undivided shares to land held in trust for the firm as part of their partnership property.

There being no reference to partnership property in the transitional provisions of the L.P.A., it was, I think, generally considered that the law remained as it was before the Act, and that Pt. IV of the 1st Sched. did not apply.

The matter therefore was in an uncertain state, and it is rather surprising that it has been so long before there has been a decision upon it.

Re Fuller's Contract came before the court upon a vendor and purchaser summons.

The facts were that by a conveyance dated in 1892 certain freehold property was conveyed to persons (therein called "the purchasers") who were partners in a firm, "To hold all the said hereditaments and premises unto and to the use of the purchasers, their heirs and assigns as joint tenants in trust for them the purchasers their executors administrators and assigns as part of their co-partnership estate." On 1st January, 1926, the property was vested in three of the original purchasers as joint tenants in trust as expressed in the conveyance. One of the three died in 1927.

The question was whether the two survivors of the original purchasers could make a good title as holding upon the statutory trusts.

Luxmoore, J., held that from the commencement of the L.P.A., 1925, the three survivors of the persons who were the grantees under the conveyance held upon the statutory trusts, the case being covered by the words of para. 1 (1) of Pt. IV of the 1st Sched. His lordship referred to the passages which I have quoted from the judgment of Romer, L.J. in *Re Bourne*, and said that he thought "that all the learned lord justice was pointing out in the passage which he had read in that case was that the beneficial interest in the real estate belonged to the partnership, that was, to those persons who constituted the partnership and that those persons were the persons who were entitled to the partnership property." I should not have thought that that was by any means all that Romer, L.J., was pointing out. Of course I have quoted from the *Weekly Notes* report, which may not fully convey what his lordship said.

Whether the decision is right or wrong, it will be welcomed, and is not likely to be disturbed. It is undoubtedly convenient, although a decision to the contrary would have

entailed no greater hardship than the necessity of joining all the partners in the conveyance. It does, however, free a purchaser from having to inquire and satisfy himself who the partners are, which in itself is a good thing, at least from a purchaser's point of view.

It is to be observed that this decision is upon the transitional provisions of the L.P.A., and refers only to a case where the property had been conveyed before 1926. It may be a question whether it has any application to a case where the conveyance to the partners takes place after the commencement of the L.P.A.

It may be that trustees of partnership property hold upon trust for sale under s. 36 (1) of the L.P.A.

That sub-section reads: "Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held on trust for sale in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity."

The learned editors of "Wolstenholme & Cherry's Conveyancing Statutes" observe upon this sub-section: "Where a legal estate has been conveyed to partners either expressly as joint tenants or without words of severance and is shown to be part of the partnership assets then the land is, it is submitted, 'beneficially limited to' them as joint tenants within this section because of the right of each partner to a general lien on the assets (not on any particular piece of land) for the purposes of winding up the partnership affairs" (12th ed., vol. I, p. 283).

I confess I cannot quite follow this note. I do not see how the lien which each partner has upon the surplus assets of the firm makes them beneficially entitled as joint tenants for the purpose of this enactment, when it has not that effect for any other purpose.

I do not know that *Re Fuller's Contract* helps in this regard, the wording of the transitional provisions in para. 1 (1) of Pt. IV of the 1st Sched. to the L.P.A. being entirely different.

Nor do I see how s. 34 (2) is applicable, for that is only concerned with a case "where after the commencement of this Act land is expressed to be conveyed to any persons in undivided shares," whereas a conveyance to partners is almost invariably in the form adopted in *Re Fuller's Contract*, namely, a conveyance to the partners or some of them as joint tenants.

It seems to me, therefore, that if *Re Fuller's Contract* is an authority regarding conveyances of that kind made after 1925 it must be on the ground that it decides that partnership property is beneficially held in undivided shares and that there is an implied trust for sale under s. 36 (4) of the S.L.A. I doubt whether that is so.

Perhaps, therefore, we are not yet at the end of our difficulties with respect to making a title to partnership property.

Protective Trusts.

I have not been able this week to prepare a draft form, as I intended, but hope to have it ready for publication in our next issue.

Landlord and Tenant Notebook.

Specific Performance and Damages.

Although virtually overruled on the main point at issue, the case of *Jaques* v. *Millar* (1877), 6 Ch. D. 153, provides a very straightforward example of one of the results of the fusion of law and equity, namely, the power to order specific performance and award damages in addition in the same action. The plaintiff sued on an alleged agreement by which the defendant was to let him a factory for thirty years at a rent of £120 a year. The defence was that the letter relied upon mentioned no date for the commencement of the term. Fry, J., held that by implication the term commenced with the agreement; this part of the decision cannot now be relied on. The plaintiff then showed that he had been unable to obtain suitable alternative accommodation for his business of an oil-refiner for fifteen weeks: that the defendant had known of his intention to use the premises for that business; that the market had been favourable; and he estimated his loss at £50 per week. Applying the tests of reasonable consequences and contemplation of parties, the learned judge awarded £250 in addition to decreeing specific performance.

It is essential to bear in mind that the effect of the fusion referred to is to prevent a litigant from "being bandied about from one court to another," as Kay, J., said in *Rock Portland Cement Co., Ltd.* v. *Wilson* (1882), 52 L.J. Ch. 214, and that no new substantive rights were created. As Cotton, L.J., put it in *Tamplin* v. *James* (1880), 15 Ch. D. 215, C.A.: "Both legal and equitable remedies are now given by the same court, and this is a case where, under the old procedure, the bill, if dismissed, would have been dismissed without prejudice to an action."

This emphasises the importance of distinguishing, when considering the position of a disappointed intending tenant or landlord, the following: (1) cases in which no agreement can be enforced at all; (2) cases in which an agreement can be enforced, but not (owing to misrepresentation, futility, defective title, etc.) by specific performance; and (3) cases in which specific performance will be ordered. The first group may be sub-divided into (i) cases in which there is no agreement, and (ii) cases in which the absence of writing or of part performance prevents the agreement from being proved.

For it has been seriously argued that the fusion of law and equity empowered courts to award damages though the agreement for a lease was incomplete or inadequately evidenced. The fallacy lies in drawing, from the mere fact that specific performance would not be ordered, the conclusion that the other remedy was available.

This was demonstrated as long ago as 1866. (True, there was no Judicature Act then, but Lord Cairns' Act had enabled the court to award damages "in addition to or in substitution for" specific performance, not yet superseded by the provision which makes it clearly unnecessary for the plaintiff to show a good case for specific performance.) In *Lewers* v. *Shaftesbury* (1866), L.R. 2 Eq. 270, the terms under which the plaintiff occupied the defendant's land were so vague that no agreement could be found, and his hopes of obtaining damages in substitution for specific performance were speedily dashed to the ground. Likewise, in *Rock Portland Cement Co., Ltd.* v. *Wilson, supra*, when it appeared that the documents relied upon did not indicate the date on which the term was to commence and that the defendant's title was inadequate, it was pointed out that the latter obstacle to specific performance did not confer the necessary jurisdiction to enable the court to overlook the former defect.

But *Elmore* v. *Pirrie* (1887), 57 L.T. 333, was decided on the principle that the plaintiff no longer had to show a case for specific performance in order to obtain damages in an action in the Court of Chancery, the claim being by vendors of a business, under an agreement, part of which could be made the subject-matter of a decree of specific performance. Kay, J., said that the effect of the Judicature Act was to enable a plaintiff to say: "If you think I am not entitled to specific performance of the whole or any part of the agreement, then give me damages." And in *Worthing Corporation* v. *Heather* [1906] 2 Ch. 532, though the plaintiffs could not specifically enforce an option to purchase contained in a lease because of remoteness, damages were awarded, Warrington, J., expressing the position as follows: "The contract remains a valid contract in every respect, but it is the limitation it creates in the contemplation of equity, and it is that alone, that is void. It seems to me, therefore, that, in principle, there would have been in an old court of common law before the Judicature Act no defence to this action, and further that, in this court also, since the Judicature Act, there is no defence, because for this purpose the court is sitting as a court of common law."

Our County Court Letter.

SCOPE OF THIRD PARTY INSURANCE POLICY.

In the recent case of *Scottish Automobile and General Insurance Co. Ltd.* v. *Freeman*, at Liverpool County Court, the claim was for £10 13s., being the amount paid under a third party insurance policy, or (alternatively) a like sum as damages for breach of contract. The plaintiffs' case was that (1) the defendant had had an accident on the 6th April, which he should have notified at once, (2) not having anticipated any claim, the defendant failed to notify the plaintiffs until the 9th May—after receipt of a third party claim, (3) on the 21st May the plaintiffs repudiated liability (by reason of non-compliance with the policy) but enquired whether they should sue the third party on defendant's behalf, (4) the defendant had replied: "I am quite content to leave the matter to the courts, if and when the occasion arises for you to carry out the terms of the policy." The plaintiffs (having settled the claim on the 26th June) claimed reimbursement from the defendant, who contended that the above letter was no authority to settle on his behalf. His Honour Deputy Judge O. G. Morris observed that the defendant had not only broken a condition of his policy, but (in deciding that he was not responsible for the accident) had behaved unreasonably. It was held, however, that the defendant had not constituted the plaintiffs his agents, and they had settled the claim without authority. Judgment was therefore given for the defendant, with costs, but leave to appeal was given—conditionally upon the defendant's costs being paid in any event, as it was not right to obtain a decision (at his expense) of the Divisional Court, for the benefit of all insurance companies and their insured.

VALIDITY OF SALE OF GRASS KEEP.

In the recent case of *Allen and Another* v. *Chambers*, at Leominster County Court, the claim was for £21 as the price of grass keep sold by auction, and the counterclaim was for the same £21—as damages for breach of covenant. The evidence was that (1) the plaintiffs were formerly tenants of the defendant's farm, and had agreed not to underlet or part with possession of any portion without the consent in writing of the landlord; (2) on surrendering their tenancy, the plaintiffs sold their stock and implements at an auction; (3) the eatage was also offered, but was bought in by the defendant, who objected to its being included in the sale. The plaintiffs' case was that (*a*) any dispute should have been dealt with under the previous arbitration, in which the plaintiffs had been awarded £265 and the defendant £17; (*b*) the counterclaim was therefore barred under the Agricultural Holdings Act, 1923, s. 16. The defendant contended that the plaintiffs had no title to the herbage, which they could not even sub-let, and he had mitigated his loss by becoming the purchaser himself. His Honour Judge Roope Reeve, K.C., observed that sales of grass keep appeared to be a local custom, as they were unknown in, e.g., the southern counties. It was held that a breach of covenant had occurred, and judgment was therefore given for the plaintiffs, with costs, on the claim; and for the defendant on the counterclaim, with costs, plus the costs incurred by him on the claim.

COUNTY COURT CALENDAR FOR APRIL, 1933.

The following sittings on Circuit 53 were omitted from the Calendar for April in last week's issue :—

Circuit 53—Gloucestershire, etc.

His Hon. Judge Kennedy, K.C.

Alcester.	Redditch, 7.
*Cheltenham, 4, 25.	Ross.
Cirencester, 27.	Stow-on-the-Wold.
Dursley, 6.	Stroud, 10.
†*Gloucester, 11, 28.	Tewkesbury.
Newent.	Thornbury.
Newnham, 24.	Winchcombe.
Northleach.	

*Bankruptcy Court. †Admiralty Court.

Reviews.

Glen's Public Assistance. By Randolph A. Glen, M.A., LL.B., Recorder of Penzance, assisted by E. Bright Ashford, B.A., Barrister-at-Law, and Alexander P. L. Glen, Solicitor. 1933. Demy 8vo. pp. xliii and (with Index) 786. London: Law and Local Government Publications, Limited. 30s. net.

This full and comprehensive work, including the index, but excluding the preface and introduction, comprises 786 pages, yet it has been compressed into one volume of such dimensions as to be much easier to handle than books of such importance usually are.

The introduction, which gives a short account of poor relief in former days, makes very interesting reading. The main part of the work which follows is divided into three parts: (1) Public Assistance; (2) Settlement, including Irremovability and Removal; (3) Mental Disability, including Lunacy, Mental Deficiency and Mental Treatment. All the relevant enactments, statutory rules and orders relating to these subjects appear to have been included, and there are many extracts from departmental reports, memoranda and circulars. Numerous decisions of the Local Government Board and the Minister of Health have been digested, and a further very useful feature is the inclusion of three approved "administrative schemes," one for a county, one for a county borough and one for London.

There are numerous annotations to the various sections of the many Acts, and those we have tested appear to be full and accurate. We confess that we do not care for the method of printing the annotations in italics, though this method probably makes the book less bulky than it would otherwise have been. On the other hand one does not take long to become accustomed to this method. The index is exceptionally clearly printed.

It is obvious that the book is the result of a very painstaking effort to produce a volume of practical utility to all engaged in public assistance, and the learned author and his assistants are undoubtedly deserving of congratulations on having succeeded in a very difficult and laborious task.

A Practical Guide to the Land Charges Act, 1925. By A. H. Cosway. Second Edition. 1933. Crown 8vo. pp. ix and (with Index) 109. London: Sir Isaac Pitman & Sons, Ltd. 5s. net.

Under our new system of conveyancing, the Land Charges Act, 1925, has been passed to take the place of the old Land Charges Registration and Searches Act, 1888, and this little book is intended to expound the principles and practice of the 1925 statute, which, as the author truly observes, is intended to play a very important part in the future of conveyancing. In addition to dealing with the Act itself, the book contains many references to the Law of Property Acts, 1925 and 1926, and the Settled Land Act, 1925, and the object of the author has been to collect together, if not all, at any rate the most important of these references, to discuss the Act generally and the rules made under it, and to make general suggestions as to its adoption. Altogether it forms a handy and practical little volume.

Company Law. By Ranking and Spicer. Sixth Edition. 1933. By H. A. R. J. Wilson, F.C.A. Demy 8vo. pp. xxxii and (with Index) 467. London: H.F.L. (Publishers), Ltd. 10s. net.

This is the sixth edition of a well-known work—the last edition of which was published at the time of the coming into operation of the Companies Act, 1929. It deals exclusively with the law relating to the formation and operation of companies, every detail of which is thoroughly expounded, and although not in any sense a legal text-book, it contains an extensive table of cases which adds considerably to its

value as a book of reference for lawyers and accountants concerned in the establishment and management of limited companies. Perhaps the greatest attraction of the book is the excellence of the text, the legibility of which makes it a pleasure to read. Each chapter begins with a synopsis of its contents and there is an admirable index which enables the reader to refer conveniently and expeditiously to any point in question.

Patents and Designs Acts. By Lord Marks and R. A. Wolstenholme. Being an explanation and commentary on the Amendments introduced by the 1932 Act, with memoranda and cardinal points concerning statutory requirements. 1933. Medium 8vo. pp. xv and (with Index 147. London: Sweet & Maxwell, Ltd. 12s. 6d. net.

The appearance of a book on this subject by two practical experts in patent agency like Lord Marks and Mr. Wolstenholme is a sufficient guarantee that it will have wide appreciation. The volume before us not only contains a commentary on the amendments introduced by the 1932 Act, but it also includes in consolidated form the requirements of the Patents and Designs Acts, 1907-1932, with a detailed index which of itself is of exceptional value. Although the volume only runs to a little short of 150 pages, it is replete with concise information, and there is a breezy atmosphere about the whole work that is well-introduced by the reprint of Charles Dickens' "Poor Man's Tale of a Patent." That the book will afford a convenient means of reference to all whose business it is to make themselves acquainted with the outlines of the patent law and that it will enjoy an extensive sale accordingly admits of no doubt.

The General Tariff of the United Kingdom. By A. S. Harvey, of H.M. Customs and Excise Department. 1933. Demy 8vo. pp. (with Index) 181. London: Sir Isaac Pitman and Sons, Ltd. 5s. net.

This is a very handy book, explaining the new tariff system made up of the older customs duties generally imposed for revenue purposes and the more recent duties which have been designed in part for the purpose of raising revenue, but more particularly with the view of protecting British industry. It deals fully with the subject of entry and clearance of goods. It explains the McKenna duties; the Horticultural Products Duties; the Wheat Act, 1932; and the Import Duties Act, 1932; and gives general directions in regard to warehousing, transhipment and importation. Altogether it forms a very serviceable handbook for all concerned in the subject of tariffs and their operation.

The Modern Law of Real Property. By G. C. Cheshire, D.C.L., M.A., of Lincoln's Inn, Barrister-at-Law, Fellow of Exeter College, Oxford. Third Edition, 1933. Medium 8vo. pp. xlvi and (with Index) 899. London: Butterworth and Co. (Publishers) Limited. 30s. net.

This valuable and well-known work has now been brought up to date. Numerous recent decisions have been incorporated and their effect considered. The Landlord and Tenant Act, 1927, has been dealt with fully, and additional explanations have been inserted with respect to tenancies in common and joint tenancies. The section treating of the powers of estate owners has been elaborated. A full note on legitimacy has been added. Other useful improvements and additions help to preserve the high standing of the book.

Butterworth's Digest of Leading Cases on Workmen's Compensation. Second Edition. 1933. By Sydney H. Noakes, of Lincoln's Inn, Barrister-at-Law. Medium 8vo. pp. lxxxvi and (with Index) 510. London: Butterworth & Co. (Publishers), Ltd. 35s. net.

This is really the second edition of "Knocker's Digest of Workmen's Compensation Cases" published in 1912. The learned author has had the assistance as consulting editor of His Honour Judge Hildesley, K.C., and the result has been the production of a volume, the utility of which goes without saying. Cases decided up to July, 1932, are included in the edition, and the editor with the enormous mass of decided cases before him, may fitly be congratulated upon the selection which he has made. Considering that during the last few years the original law on this subject has been transformed almost out of recognition, it has been necessary to re-write the original text almost completely, and to alter the method of treating various topics. The introduction by His Honour Judge Hildesley is of itself a very valuable contribution to the study of the subject of workmen's compensation, and will well repay perusal by all concerned in the administration of this department of law. We can confidently affirm that the library of any practitioner concerned with the subject of workmen's compensation would be incomplete without this valuable digest of the law.

Books Received.

Local Government and Public Health Consolidation Committee —Interim Report. 1933. London: H.M. Stationery Office. 2s. net.

Draft of a Local Government Bill. Prepared by the Local Government and Public Health Consolidation Committee. 1933. London: H.M. Stationery Office. 4s. net.

The Law as to Children and Young Persons. By Edward J. Bullock, M.A. (Oxon), Barrister-at-Law, Inner Temple, Midland Circuit and C.C.C. 1933. Medium 8vo. pp. xxv and (with Index) 206. London: Stevens & Sons, Ltd. 15s. net.

Reports on Public Health and Medical Subjects. No. 69.—*Report on an Outbreak of Enteric Fever in the Malton Urban District.* By W. V. Shaw, O.B.E., M.D. 1933. London: H.M. Stationery Office. 1s. 6d. net.

The Law of Wills for Testators, or How to Make a Will. Fourth Edition. 1933. By G. F. Emery, LL.M., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. Crown 8vo. pp. x and (with Index) 169. London: Sir Isaac Pitman & Sons, Ltd. 3s. 6d. net.

Robert Smith Surtees. By Frederick Watson. 1933. Demy 8vo. pp. (with Index) 292. London: George G. Harrap and Co. Ltd. 12s. 6d. net.

Gibson's Bankruptcy. Tenth Edition. 1933. By Arthur Weldon and F. W. E. Hobson, LL.B. (Cantab.), Solicitor. Medium 8vo. pp. lix and (with Index) 312. London: The "Law Notes" Publishing Offices. £1 net.

The Complete Law of Town and Country Planning. By H. A. Hill, B.A., of Gray's Inn, Barrister-at-Law, assisted by T. W. Naylor, B.A., LL.B., of Gray's Inn, Barrister-at-Law. 1933. Medium 8vo. pp. xxiii and (with Index) 448. London: Butterworth & Co. (Publishers), Ltd; Shaw & Sons, Ltd. 30s. net.

Civil Procedure in a Nutshell. By Marston Garsia, B.A., of the Middle Temple and the South-Eastern Circuit, Barrister-at-law. Second Edition. 1933. Demy 8vo. pp. v and 89. London: Sweet & Maxwell, Ltd. 3s. 6d. net.

Hudson on the Law of Building and Engineering Contracts. Sixth Edition. 1933. By Arnold Inman, O.B.E., B.A., of the Inner Temple and the Western Circuit, one of His Majesty's Counsel, and Lawrence Mead, B.A., of the Middle Temple and the Oxford Circuit, Barrister-at-Law. Medium 8vo. pp. lxxxi and (with Index) 607. London: Sweet & Maxwell, Ltd. £3 3s. net.

The Professions. By A. M. Carr-Saunders and P. A. Wilson. 1933. Demy 8vo. pp. vii and (with Index) 536. Oxford: The Clarendon Press. 25s. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Sale by Mortgagee—Auctioneer Creditor of Mortgagor Instructed—Auctioneer's Lien on any Surplus for his Debt.

Q. 2691. A is indebted to B, who is a building society agent, to the extent of £550 under second mortgages. A is also indebted to C, a firm of estate agents and auctioneers, who have no security, in a sum of £350. C collect the rents and are paying the building society subscriptions to B, but have allowed the second mortgage interest to be in arrear for two months. The rents are not sufficient to cover the building society subscriptions and second mortgage interest. C are collecting the rents on the instructions of A. A cannot be found, and B is considering a sale of the property. Would you kindly advise the best course to adopt, having regard to the fact that A cannot be found, and say if it would be advisable for B to instruct C as auctioneers in the event of an auction sale being decided upon. As C have no security, I take it that should there be a surplus B would have to invest that until A was traced or until he was served with a garnishee summons on behalf of C.

A. We are not informed whether the debt due to C is of such a nature as to give them a lien upon any property or funds of A from time to time in their hands. Even if their debt is of such a nature as to give them a lien, we do not think that this could be claimed as against the proceeds of a sale or any part thereof made on the instructions of B, even though there was a surplus which in fact was part of A's property. At the same time we do not recommend, with a view to obviating any difficulty, that B should instruct C unless they are prepared to agree that they will not endeavour to claim any lien upon any possible surplus. We agree that the surplus should be invested (or perhaps better put upon deposit), and no doubt C would issue garnishee proceedings against B.

Personal Representative—Power to Postpone Conversion of Unauthorised Investments being Pure Personalty.

Q. 2692. A, by her will, appointed two executors, and gave the residue of her real and personal estate upon trust that her trustees should sell and convert and hold the residue of her estate upon trust for her children as they attained twenty-five years of age. The will does not contain the usual power to postpone the sale of unauthorised investments. All the deceased's children are under twenty-one years of age. All duties, debts, funeral expenses, etc., have been paid. Under s. 39 (1) (ii) of the Administration of Estates Act, 1925, personal representatives are, during the minority of a beneficiary, given all the powers conferred on trustees holding land upon trust for sale. Under s. 25 (1) of the L.P.A., 1925, a power to postpone sale in case of every trust for sale of land is implied. The executors of the deceased's will wish to postpone the sale of certain shares which are unauthorised investments, but having regard to the decision *In Public Trustee* v. *Trollope* [1927] 1 Ch. 596, it appears that they cannot safely do this as their duties as personal representatives have now come to an end. Have the executors in the present case any power to postpone the sale of the unauthorised investments during the minority of the deceased's children ?

A. We do not think so. Quite apart from the question of the duration of the powers conferred by the Ad. of E.A., 1925, s. 39, the provisions of sub-s. (1) (ii) of that section do not, it is thought, operate to make the L.P.A., 1925, s. 25 (1), applicable to *pure personalty*.

Purchase of Trust Property by Wife of a Trustee—Validity.

Q. 2693. A and B, before 1926, were seised of certain property as tenants in common in fee simple. A died in 1925. Consequently, on the 1st January, 1926, the property vested in the public trustee. (Section 1 (4) of Pt. IV of 1st Sched., L.P.A., 1925.) B died in 1929. C and D, as the executors of the will of A, and E and F as the executors of the will of B, being persons interested in more than one-half of the property or the income thereof, appointed themselves trustees of the property in place of the Public Trustee. C, D, E and F, as such trustees, have now agreed to sell the property to the wife of F. It is desired to know whether this is possible in view of the fiduciary position of F himself as one of the trustees. In the event of a sale by the trustees themselves alone to the wife of F not being possible, a suggestion as to an alternative method would be appreciated also any precedents.

A. There is no absolute rule of law that the wife of a trustee cannot buy the trust property (*Burrell* v. *Burrell* [1915] S.C. 333), at the same time the transaction is not a very satisfactory one. Should our subscribers decide not to risk such a purchase, advantage might be taken of the principle that a trustee (and, of course, his wife) may buy the interest of the beneficiary in the trust property if the price is fair, if the beneficiary is competently and independently advised in respect of the transaction, and if the trustee makes full disclosure to the beneficiary of all the facts within his knowledge relative to the property and the circumstances of the transaction. C and D, as the personal representatives of A, and E and F as the personal representatives of B, could sell to F's wife the equitable interests of their respective testators' estates in the property, and F's wife being then absolutely entitled in equity, could call for an assurance of the legal estate free from any trust for sale from C, D, E and F. The whole transaction could be effected by the one deed. The stamp would be *ad valorem* plus 10s. We regret that we cannot quote a precedent.

Will—Gift of Real and Personal Estate to Widow of Testator "as long as she remained single absolutely" without a Gift over—Construction.

Q. 2694. A, a farmer, died in 1913, and by his will he "gave and devised all his estate and effects real and personal of which he might die possessed or be entitled to unto his wife B as long as she remained single absolutely, and appointed B and C (a stranger) executors." A died possessed of a freehold farm (subject to a mortgage) and various personal estate. It will be noticed that there is no gift over in the event of the re-marriage of the widow, and that the word "absolutely" is used in the will. The widow B is an old lady, and has not re-married, and there are several children of the marriage of A and B, all of age. Part of the mortgage on the real property has been discharged by B since the death of A. The point is whether the will amounts to an absolute gift of A's estate to B if B dies without re-marrying, and, if not, who would be entitled to A's real and personal estate respectively on the death of B ?

A. This is a problem of very considerable difficulty. We express the opinion that the widow takes an absolute interest, and we reach this conclusion on the following grounds: (*a*) the gift is expressed to be for the benefit of the donee "absolutely"; (*b*) there is no gift over; (*c*) the words "as long as" may refer to time or be synonymous with "if." We suggest that they do not refer to time because the testator made no provision for the end of that time. On this view there is a condition in restraint of second marriage and not the cesser of a benefit on second marriage; (*d*) a condition restraining a widow of a testator from marrying again, in the absence of a gift over upon breach of the condition, has been construed as merely *in terrorem*. (See White and Tudor's "Leading Cases in Equity," Fourth Ed., Vol. I, p. 586 and cases there cited.)

Recovery of Furniture Storer's Charges.

Q. 2695. A is a furniture storer, and he has in his possession goods on which no rent has been paid for a number of years, and the present addresses of the owners he is now unable to trace. What are his strict legal rights and remedies in the matter? Can he by means of advertising or otherwise safely sell the goods and apply the proceeds in discharge of his claims for rent?

A. Although the charges are made under the name of "rent," there is in fact no relationship of landlord and tenant, and A has therefore no right to distrain. Neither has he a common law lien, as the goods were not left with him to be repaired, but merely for storage. A has no power of sale, in these circumstances, and any sale by him will be a conversion of the goods, for which he will be liable to be sued for damages. The latter may be merely nominal, however, and will depend upon whether the goods are of a type which the owner could easily replace, or whether they are of special value by reason of their rarity. It will therefore be a matter for calculation, viz., whether, in view of the amount of the claim for storage charges, the owner may have suffered sufficient damage to make it worth his while to bring an action. If the storage charges have accumulated, so as to be approximately the same value as the furniture, A will be reasonably safe in selling—after advertising his intention. There is always the possibility that the owner may allege that the furniture had a sentimental value (in excess of its intrinsic value in the open market) but there is the defence (for A) that even furniture with a sentimental value is an incumbrance, rather than an asset, in the present days of small houses and few servants. Any surplus realised on the sale must be held on trust for the owner, who will be able to claim it, even after six years, as it is more than a simple contract debt. A, in order to be perfectly safe, should sue for the amount of his claim, obtain an order for substituted service, and sign judgment by default. He can then issue execution, give facilities for this to be levied upon the furniture, and so recover the amount of his claim and costs.

Shop Assistant's Criminal Liability.

Q. 2696. Clients of mine who have a wholesale and retail general dealer's shop had in their employ a young girl. One day when they were going through their stock they found that goods to the value of approximately £100 were missing. They thereupon questioned their assistants in the shop, but got no satisfaction. They then consulted the police authorities and detectives interviewed the assistants. Eventually one of the assistants admitted that she had sold articles below their cost, handed out articles without receiving payment, made no invoices or records of certain transactions. She never informed her employers of this, and when she was asked to make a statement to the police she made a false statement. She told her employers that a certain man called at the shop and told her that her employers let him have goods at such and such a price, this being the story she put forward for selling goods below their cost. Is the assistant in question criminally responsible, and if so what should be the nature of the proceedings against her in respect of the alleged acts? I should point out that the persons to whom she gave the goods have not been located, and according to the girl's story she does not know either their names or whereabouts.

A. The question does not state whether the police visited the assistant's home, in order to ascertain whether any of the goods were there. In such cases the home is often used as a place of distribution of the stolen property, and it may be possible to charge the parents with receiving. The story of the man calling at the shop does not bear the stamp of truth, and was probably invented to conceal the girl's own pilfering. Unless some of the stolen articles can be found in her possession, or under her control, it will be difficult to charge the girl with larceny. Her own story is not a confession of larceny, and (although doubtless false) merely reveals a breach of duty, and no crime. There is also no evidence of falsification of accounts with intent to defraud, as the omission to make records may be due to negligence only. If the man could be found, he and the girl might be jointly charged with conspiracy to defraud, but her statements would not be evidence against him, if he denied the charge. It might happen that the girl would plead guilty to a charge of larceny, but there is only evidence of a general shortage in stock, and this is insufficient for the issue of a summons or warrant. The conclusion is that the assistant in question is not criminally responsible—unless she retracts her previous story and makes a further statement, tantamount to a confession of larceny.

Rent Restriction Acts—Executrix of Deceased Tenant taking over Beerhouse Licence.

Q. 2697. The licensee of a beerhouse died leaving a will appointing his widow sole executrix, and bequeathed all his property to her. The beerhouse was protected under the Rent Restrictions Acts, and the landlords have served notice to quit on the widow who has taken up the licence. The widow decided not to prove the will and has not done so. Is the widow entitled to repudiate the gift under the will of the licensed premises, and to take as if there were an intestacy, and thus claim the benefit of the definition of tenant in s. 12 (*g*) of the Act? If the answer is in the affirmative, should the son take out letters of administration after renunciation of probate by the widow, and should she execute any document repudiating the gift under the will?

A. Whatever might have been the position if the widow had disclaimed immediately after the death, the opinion is given that it is now too late for her to do so. She must, or will be deemed to, have applied for transfer of licence as the executrix of her husband and cannot now repudiate the will.

Correspondence.

Railways (Valuation for Rating) Act, 1930. In the Court of Railway and Canal Commission.

Sir,—On an application before Sir Francis Taylor, K.C., and Sir Francis Dunnell, on Thursday last, Sir Francis Taylor stated, on the authority of Mr. Justice MacKinnon and Lord Blackburn, that the Commission had decided that on appeals from any decision of the Joint authority under the above Act, which affects local authorities both in England and Scotland, members of the Scottish Bar would be heard in England and members of the English Bar would be heard in Scotland.

Torr & Co.,
Solicitors for The Anglo-Scottish
Railways Assessment Authority.

Bedford-row, W.C.1.
30th March.

In Lighter Vein.

The Week's Anniversary.

Of all the Chief Justices of England, Lord Kenyon seems to have been singled out as a joke for posterity. In an age of ostentation, he lived simply, to the bounds of parsimony. At a time when classical accomplishments were prized, he used to stumble into the pitfalls of elementary Latinity. His extreme irascibility and the coarse homeliness of his habits swelled the collection of absurd stories that gathered round his name. Yet he was a good lawyer, an honest judge and, in all but his rough tongue, a kindly man. The strange mixture that he was is well illustrated in the record of one of his kind gestures. A briefless barrister was one day walking along the road from Richmond to London when a coach overtook him. "Its coronet was scarcely discoverable and its gildings were mouldy, yet it seemed tenacious of what little remained of its dignity and unwilling to subside into a mere hackney coach." From the window emerged a head in a red night-cap—worn to save a wig. It was Lord Kenyon who offered the young man a lift to London. "He made the journey quite delightful by charming anecdotes of the Bar in his own time"—that Bar where for six years he had had no work while he lived in Bell Yard on an allowance of £80 a year, reading law by night and noting the judgments of Lord Mansfield by day. At that time the industrious young Welshman little dreamed that he would be the immediate successor of the great Scotsman who had been appointed Chief Justice the year he was called to the Bar. He himself filled the office for fourteen years before he died at Bath on the 4th April, 1802, worn out by a life of care and labour and sickened with grief for the death of his eldest son.

Politics and the Law.

The able Chancery silk recently returned to the House of Commons for Ashford will reinforce those lawyers whose analytical criticism has more and more to combat the unscientific generalisations which the bungling lay innovators there have made characteristic of modern statutes. It is rather puzzling to guess why the legislative jungle of the United States is even more luxuriant than our own, for there the law has been almost an apprenticeship to politics. President Wilson once said that "The profession I chose was politics; the profession I entered was the law. I entered the one because I thought it would lead to the other. It was once the sure road and Congress is still full of lawyers." The law over here has rarely led to the Premiership, but in the case of the unlucky Spencer Perceval it led to assassination as well. Gladstone, on the other hand, was six years a student of Lincoln's Inn before he finally decided that active legislation would not leave him time to pass any more legal examinations. To return to Ashford, Chancery practitioners have not all the advantages enjoyed at the polls by members of the criminal Bar. There is a story of how Sir Ernest Wild, the Recorder of London, was canvassing a Norfolk constituency in his political days and called on a voter whom he had once successfully defended on a charge of stealing a gun. The man was out, but his wife said, "My old man'll vote for you. Why, you got him off when he stole that gun." "Was alleged to have stolen it, you mean, my dear madam." "Alleged be bothered. Why, I've got the gun upstairs now."

Medical Uncertainty.

In connection with the case of a young lady who was recently before the court on certain drug charges, the Acting Chairman of the London Sessions remarked: "I was told a month ago by two eminent medical practitioners that she was incurable. A fortnight later I was told that, so far from being incurable, she was completely recovered." The uncertainty of medical speculations is everywhere admitted, and was remarkably illustrated by a curious case in New Zealand some years ago. The owner of a large estate went mad in 1896. Before that, he had made a very sensible will, dividing his land between his six children. After the Great War broke out, conditions made it desirable that the estate should be broken up, and someone conceived the idea of passing a private Act of Parliament authorising the Supreme Court to grant administration of the testator's will on the assumption that he was dead. Before taking this rather desperate and original step, the persons concerned called in the best medical advice which unhesitatingly declared the patient incurable. The Act was therefore passed without any difficulty, £9,000 being set aside for the maintenance of the man "deemed to have died." Very shortly afterwards the old gentleman crowned the Gilbertian situation by thoroughly and indisputably recovering his senses. However, he was quite content to be legally dead and delighted to speculate on the problem which would confront the courts if he ever committed a crime and pleaded "death by Act of Parliament" as an answer.

Obituary.

Mr. G. A. SCOTT.

Mr. George Alexander Scott, one of the Official Referees at the Royal Courts of Justice, died at Lancaster Gate on Wednesday, 29th March, in his seventy-first year. A son of the late Mr. Justice Scott, of the Calcutta High Court, he was educated at Repton and Pembroke College, Cambridge, and having been called to the Bar by the Inner Temple in 1887, he went the South Wales Circuit. He was appointed one of the three Official Referees of the Supreme Court of Judicature in 1920.

Mr. R. A. ANDERSON-ASHTON.

Mr. Rodney Ashton Anderson-Ashton, solicitor, head of the firm of Messrs. Anderson, Son & Tyrell, of Ludlow, died recently at Ludlow at the age of eighty-seven. Mr. Anderson-Ashton, who was admitted a solicitor in 1881, was Clerk for many years to the Governors of Ludlow Grammar School and the Charity Trustees. He retired from these positions a few years ago.

Mr. J. F. BUTLIN.

Mr. John Francis Butlin, retired solicitor, of Edgbaston, died recently at Brighton at the age of eighty. He was admitted a solicitor in 1875, and practised in Birmingham, where he was a member of the firm of Messrs. Tarleton and Butlin.

Mr. T. CLAYHILLS-HENDERSON.

Mr. Thomas Clayhills-Henderson, retired solicitor, of Darlington, died at his home on Sunday, 26th March, at the age of ninety-seven. After serving his articles with Messrs. Mewburn, Hutchinson & Mewburn, of Darlington, he was admitted a solicitor in 1857. For thirty-three years he was Clerk to the old Darlington Highway Board, which was merged into the Rural Council on its formation. He entered into partnership with Mr. Arthur Feetham, and they practised together as Messrs. Clayhills, Son & Feetham. Mr. Clayhills-Henderson retired a few years ago, having been in active practice as a solicitor for seventy-two years.

Mr. A. R. DAVIES.

Mr. Arthur Russell Davies, solicitor, of Keighley, died at Morecambe on Tuesday, 14th March, at the age of forty-four. Mr. Davies served his articles with his brother in London, and was admitted a solicitor in 1919. He was with the old-established firm of Messrs. Wright & Wright, of Keighley.

Mr. J. W. GEARE.

Mr. John Walter Geare, solicitor, of Crewkerne, Somerset, died on Friday, 24th March, after a long illness, at the age of fifty-five. Mr. Geare was admitted a solicitor in 1901.

Notes of Cases.

Judicial Committee of the Privy Council.

Rhodesia Railways Ltd. *v.* Collector of Income Tax of Bechuanaland Protectorate.

Lord Atkin, Lord Russell of Killowen, and Lord Macmillan. 21st February.

Income Tax—Railway Company—Repairs to Track—Expense Deductable for Income Tax Purposes.

The appellants, Rhodesia Railways, Ltd., a company registered in the United Kingdom, own a railway between Vryburg and Buluwayo. The line is 588 miles in length, of which 394 miles are in the Bechuanaland Protectorate, and the company are liable to income tax there in respect of the profits derived from carrying on their undertaking in the Protectorate. In making their return of income for the year of assessment to the 30th June, 1931, based on their accounts for the year to the 30th June, 1930, the appellants debited a sum of £252,174 under the heading "renewals of permanent way" and that sum was disallowed by the respondent Collector. The Special Court of the Bechuanaland Protectorate dismissed the appellants' appeal against the disallowance, and the appellants now appealed to the Judicial Committee of the Privy Council. The facts, briefly, are as follows: By November, 1929, the appellants' track generally was found to be in a worn and dangerous state, and to require heavy repairs. The appellants laid new sleepers, new rails and new fastenings to a length of 33½ miles, and the line so re-laid was of the same weight as the old line. On a further 40½ miles of track the old rails were re-laid, but new sleepers were put in. By s. 15 (1) of the Proclamation in which the provisions relating to income tax were set out it was provided: "For the purpose of ascertaining the taxable income of any person there shall be deducted from the income of such person (*a*) losses and outgoings actually incurred in the territory by the tax-payer in the production of his income . . . provided such losses or outgoings are not of a capital nature; (*b*) sums expended for the repairs of property occupied for the purpose of trade or in respect of which income is receivable . . ."

Lord Macmillan, giving the judgment of the Board, said that the expenditure here in question was incurred in consequence of the rails having been worn out in earning the income of previous years on which tax had been paid without deduction in respect of such wear and represented the cost of restoring them to a state in which they could continue to earn income. He referred to a passage by Buckley, L.J. (as he then was) in *Lurcott* v. *Wakely & Wheeler* [1911] 1 K.B. 905, at p. 923; 55 Sol. J. 290, and to *Highland Railway Co.* v. *Special Commissioners of Income Tax* (1889), 2 T.C. 485, and said that in the present case the renewals effected constituted no improvement within the meaning of the latter authority, they merely made good the line so as to restore it to its original state. As such, in their lordships' opinion, they were "repairs" within the meaning of s. 15 (1) (*b*) of the Proclamation, and the cost of them did not constitute an outgoing of a capital nature within the meaning of s. 15 (1) (*a*). It followed that the sum of £252,174 expended on the work by the appellants was deductible from their income for the purpose of ascertaining their taxable income.

Counsel: *Latter*, K.C., and *Cyril King*, for the appellants; *The Attorney-General* (Sir Thomas Inskip, K.C.), and *R. P. Hills*, for the respondent.

Solicitors: *Coward, Chance & Co.; Gedge, Fiske & Co.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Mr. Empson Alcock, solicitor, of Tittensor and of Burslem, left £30,977 gross, with net personalty £23,810. He left £200 to General Haig's Fund for Commissioned Officers who suffered in the Great War; £500 for a stained glass window in Barlaston Church; £300 to the Cripples' Home at Hartshill; £200 to St. Dunstan's Hostel; £200 to Haywards Hospital at Burslem.

Probate, Divorce and Admiralty Division.

Newte *v.* Newte and Keen.

Langton, J. 20th February.

Divorce—Variation of Settlements—Alteration of Order — Extinction of Petitioner's Interest in Respondent's Fund — Usual Application Omitted through Inadvertence—Limited Power in Court to Review Order—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, c. 49), s. 192.

This was a motion on behalf of a wife-respondent to alter an order made in 1918 upon the husband-petitioner's petition for variation of a post-nuptial settlement made in 1898. The petitioner had covenanted therein to bring after-acquired property into settlement on trust for himself for life, with a subsequent life interest for the respondent. The respondent had brought property into the settlement. A life interest in her fund was reserved to her and she took an absolute interest in the event of her surviving the petitioner; but in the event of her pre-deceasing the petitioner she had a general power to appoint by will, and if she failed to exercise that power and survived the petitioner, her settled property was, on her death, to devolve on her next-of-kin, as if she had died intestate without a surviving husband. The order on the petition for variation made on 29th July 1918 released the petitioner from his covenant to settle after-acquired property and extinguished his power of appointing new trustees. By inadvertence an application was not made that the settlement should thereafter be read as if the husband had pre-deceased the wife so as to give her an absolute interest whether she survived him or not. On 27th June, 1918, the wife had made a settlement in contemplation of her proposed marriage to the co-respondent in the suit, which took place on 29th June, 1918. Under the later settlement the wife covenanted with the trustees thereof that immediately after her marriage she would by will appoint to them her fund under the 1898 settlement, reserving to herself a power of revocation at the end of twenty years, on the exercise of which she would take her fund absolutely. At the date of the order for variation the fact of the later settlement was not known to the petitioner, and was not before the court. The respondent now desired to revoke the later settlement to take effect on the expiration of the twenty years, but had been advised that in the event of her not surviving her former husband she had no absolute interest in the fund. She now moved for an order that the 1898 settlement should be read as if the petitioner were dead and had died in her lifetime. There was an affidavit by the petitioner that at the date of the order for variation he intended that the respondent should have what she now asked for. Counsel for the respondent submitted that notwithstanding the principle that an order on variation of settlements was final, the court might rectify an obvious mistake where the facts were the same as when the order for variation was made. *Gladstone* v. *Gladstone*, 1 P.D. 442; and *Benyon* v. *Benyon and O'Callaghan*, 15 P.D. 29, 54, were therefore distinguishable. In *Arkwright* v. *Arkwright* (1895), 73 L.T. 287, an order for variation was amended in the interests of young children of the marriage. In *Taylor* v. *Taylor* (1926), 161 L.T. 236, the court rejected a motion on behalf of a widow for the variation of a registrar's order for variation made thirty-four years previously, but there was no question of an admitted mistake in that case. Counsel for the petitioner consented.

Langton, J., accepted the argument for the respondent, and made the order as prayed.

Counsel: *F. L. C. Hodson* and *S. E. Karminski*, for the applicant; *R. S. King-Farlow*, for the petitioner.

Solicitors: *Walters & Co.; Godden, Holme & Ward.*

[Reported by J. F. Compton-Miller, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* Evan Jones.

Lord Hewart, C.J., Charles and Humphreys, JJ.
27th February.

Criminal Law—Incest—Admission by Father the only Evidence of Relationship.

This was the appeal against conviction and sentence of Evan Jones, who was convicted at the Montgomeryshire Assizes on the 20th January, 1933, of incest with his daughter Gwladys, aged twenty-two, and was sentenced to three years' penal servitude. The appellant was forty-two years old. At the trial the appellant's wife refused to give evidence, and the only evidence on which the Crown could rely to prove the relationship of father and daughter was that of a police officer, who said that when he visited the appellant's house the appellant volunteered a statement.

Lord Hewart, C.J., in giving the judgment of the court, said that on the 25th November, 1932, a police sergeant saw the appellant, and the appellant began by saying: "This is a terrible business." He was then cautioned, and in the presence of his wife, his daughter Gwladys and the police sergeant, made a statement in the course of which he said that Gwladys was his daughter and he was responsible for her condition. That statement was written in English and was signed by the appellant. The mother did not wish to give evidence, and therefore the only evidence that the girl was the appellant's daughter was his own admission. Now it was to be observed that at no stage in these proceedings did the appellant allege to the contrary. Their lordships had come to the conclusion that there was in this case evidence to go to the jury, and they were of opinion that the appeal should be dismissed.

Counsel: *Francis Williams*, for the appellant; *R. G. S. Bankes*, for the Crown.

Solicitors: *The Registrar of the Court of Criminal Appeal; the Director of Public Prosecutions.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.

	PAGE
Appeals of W. H. Cowburn and Cowpar, Ltd., *In re*: Alfred Bailey and William Henry Bailey, *In re*	64
Arcos, Limited *v.* E. A. Ronaasen & Son	99
Balden *v.* Shorter	138
Barras *v.* Aberdeen Steam Trawling & Fishing Co., Ltd.	215
Bonar Law Memorial Trust *v.* Commissioners of Inland Revenue	101
Borwick's Settlement, *In re*: Borwick *v.* Borwick	197
Broken Hill Proprietary Company, Limited *v.* Latham and Others	29
Bryce *v.* Bryce	49
Burnett Steamship Co. Ltd. *v.* Joint Danube and Black Sea Shipping Agencies	100
Burnham-on-Sea Urban District Council *v.* Channing and Osmond	177
Cadbury Brothers, Ltd. *v.* Sinclair (Inspector of Taxes)	138
County Borough of Gateshead (Barn Close) Clearance Order, 1931, *In re*	12
Crosse: Crosse *v.* Crosse, *In re*	116
Dawson *v.* Winter	29
Dodds, Alfred E., *In re* the Appeal of; McManus, *In re*	49
Donovan and Another *v.* Union Cartage Company, Ltd.	30
Glanely (Lord) *v.* Wightman (Inspector of Taxes)	215
Gooding *v.* Benfleet Urban District Council	177
Grundy *v.* Hewson	216
Henry (Inspector of Taxes) *v.* Galloway	64
Horniman *v.* Horniman	158
Jay's Ltd. *v.* Jacobi	176
Keane and Others *v.* Mount Vernon Colliery Company	157
Kleinwort, Sons & Co. *v.* Associated Automatic Machine Corporation, Ltd.	12
Lakeman *v.* Corporation of Chester	198
London and North Eastern Railway Company *v.* Brentnall	116
Matthew Ellis Limited, *In re*	82
Milner *v.* Allen	83
Morriss *v.* Baines & Co., Ltd.	84
Mould *v.* Mould	117
Ogden, *In re*: Brydon *v.* Samuel	216
Owners of s.s. "Anastasia" *v.* Ugleexport Charkow	12
Owners of s.s. "Liesbosch" *v.* Owners of s.s. "Edison"	176
Oxley, *In re*	11
Partridge Jones and John Paton, Ltd. *v.* James	100
Prudential Assurance Co. *v.* Adelaide Electric Supply Co.	100
Rex. *v.* Beadell	158
Rex *v.* Disney	178
Rex *v.* Manley	65
Rex *v.* Stringer	65
Rex *v.* William Bolkis	13
Russian Bank for Foreign Trade, *In re*	197
Seaton *v.* Slama	11
Shingler (Inspector of Taxes) *v.* P. Williams and Sons	139
Shuttleworth *v.* Leeds Greyhound Association Ltd. and Others	48
S. Southern (Inspector of Taxes) *v.* A.B.; Same *v.* A.B. Limited	139
Stead Hazel and Co. *v.* Cooper	117
Stevens & Sons *v.* Timber and General Mutual Accident Insurance Association, Limited	116
Tea Trading Co., *In Re*: K. & C. Popoff, Brothers	215
Trenchard, H., as Liquidator of The National United Laundries (Greater London), Ltd. *v.* H. P. Bennet (H.M. Inspector of Taxes)	83
Walters' Deed of Guarantee; Walters' "Palm" Toffee Limited *v.* Walters, *In re*	83
Wesleyan and General Assurance Society *v.* Attorney-General	48
White Sea Timber Trust, Limited *v.* W. W. North, Limited	30
Wiggins (Inspector of Taxes) *v.* Watson's Trustees	157
Williams *v.* Russell: Williams *v.* Watkins	198
Woodfield Steam Shipping Co. Limited *v.* Bunge, Etc., Industrial of Buenos Ayres	64

Parliamentary News.

Progress of Bills.

House of Lords.

Assurance Companies (Winding-Up) Bill.
Royal Assent. [29th March.

Austrian Loan Guarantee Bill.
Royal Assent. [29th March.

Benefices (Purchase of Rights of Patronage) Measure.
Royal Assent. [29th March.

Children and Young Persons Bill.
Read Third Time. [29th March.

Consolidated Fund (No. 2) Bill.
Royal Assent. [29th March.

Doncaster Area Drainage Bill.
Read Second Time. [28th March.

Evidence (Foreign, Dominion and Colonial Documents) Bill.
Royal Assent. [29th March.

Housing (Financial Provisions) Bill.
Read Second Time. [23rd March.

Indian Pay (Temporary Abatements) Bill.
Royal Assent. [29th March.

Local Government (General Exchequer Contributions) Bill.
Royal Assent. [29th March.

London Passenger Transport Bill.
Amendments reported. [28th March.

Ministry of Health Provisional Order (Chester and Lancaster) Bill.
Royal Assent. [29th March.

Ministry of Health Provisional Order Confirmation (Buckingham and Oxford) Bill.
Royal Assent. [29th March.

Ministry of Health Provisional Order Confirmation (Leek) Bill.
Royal Assent. [29th March.

Ministry of Health Provisional Order Confirmation (Rugby Joint Hospital District) Bill.
Royal Assent. [29th March.

Ministry of Health Provisional Order Confirmation (Taunton and District Joint Hospital District) Bill.
Royal Assent. [29th March.

Ministry of Health Provisional Order (Eton Joint Hospital District) Bill.
Royal Assent. [29th March.

Ministry of Health Provisional Order (Torquay) Bill.
Read First Time. [28th March.

Pharmacy and Poisons Bill.
Read Third Time. [23rd March.

Preston Corporation Bill.
Royal Assent. [29th March.

Protection of Birds Bill.
Reported, with Amendments. [28th March.

Public Works Facilities Scheme (Torquay Corporation) Confirmation Bill.
Royal Assent. [29th March.

Visiting Forces (British Commonwealth) Bill.
Royal Assent. [29th March.

Wigan Corporation Bill.
Read Second Time. [29th March.

House of Commons.

Army and Air Force (Annual Bill).
Read Second Time. [28th March.

Durham Corporation Bill.
Reported, with Amendments. [23rd March.

Housing (Financial Provisions) (Scotland) Bill.
Reported, with Amendments. [23rd March.

London and North Eastern Railway Bill.
Reported, with Amendments. [29th March.

Ministry of Health Provisional Order (Torquay) Bill.
Read Third Time. [23rd March.

Ministry of Health Provisional Orders (Bath and Bury and District Joint Water Board) Bill.
Read First Time. [29th March.
Ministry of Health Provisional Orders (Hereford and West Kent Main Sewerage District) Bill.
Read First Time. [24th March.
Ministry of Health Provisional Orders (Tees Valley Water Board and West Monmouthshire Omnibus Board) Bill.
Read First Time. [24th March.
Pharmacy and Poisons Bill.
Read First Time. [28th March.
Solicitors (Scotland) Bill.
Read Second Time. [24th March.
Trout (Scotland) Bill.
Read Second Time. [24th March.

Questions to Ministers.

INCOME TAX LAW (COMMITTEE).

Major NATHAN asked the Financial Secretary to the Treasury the position of the committee appointed to consider the re-drafting of the law relating to Income Tax, the number of occasions upon which that committee has met during the past six months, the present state of their deliberations, and when it is anticipated that a report will be made?

Mr. HORE-BELISHA: The committee has been meeting regularly during 1932 and 1933 at intervals of a week or ten days except during the legal vacations. In the course of the last six months there have been thirteen meetings of the full committee, and in addition a large number of meetings of the drafting sub-committee. Further substantial progress has been made with the work of codification and a draft of those portions of the Bill which deal with the substantive law (as distinguished from the administrative provisions) is now in proof print, but in view of the magnitude and complexity of the work still remaining to be done, it is unlikely that the committee will be in a position to make a report this year. [28th March.

Rules and Orders.

THE BANKRUPTCY AMENDMENT (NO. 1) RULES, 1933, DATED MARCH 20, 1933, MADE UNDER SECTION 132 OF THE BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5, C. 59).

1. The following Rule shall be inserted in the Bankruptcy Rules, 1915(*) after Rule 175 and shall stand as Rule 175A :—

"175A. Where a petition is dismissed or withdrawn by leave of the Court an order shall be made at the same time, unless the Court otherwise directs, vacating the registration of the petition as a pending action."

2. The following Rule shall be inserted in the Bankruptcy Rules, 1915, after Rule 188A and shall stand as Rule 188B :—

"188B. Where a receiving order is rescinded, an order shall be made at the same time, unless the Court otherwise directs, vacating the registration of the receiving order in the register of Writs and Orders affecting land, and the Court may also order the vacation of the registration of the petition as a pending action."

3. The following Rule shall be inserted in the Bankruptcy Rules, 1915, after Rule 212 and shall stand as Rule 212A :—

"212A. Where an order is made approving a composition or scheme, an order shall be made at the same time, unless the Court otherwise directs, vacating the registration of the receiving order in the register of Writs and Orders affecting land, and the Court may also order the vacation of the registration of the petition as a pending action."

4. The following Rule shall be inserted in the Bankruptcy Rules, 1915, after Rule 226 and shall stand as Rule 226A :—

"226A. Where an adjudication is annulled, an order may be made at the same time vacating the registration of the petition as a pending action, and vacating the receiving order in the register of Writs and Orders affecting land."

5. The following words shall be added at the end of Form Numbered 24 in Part I of the Appendix to the Bankruptcy Rules, 1915 :—

"And it is ordered that the registration of the petition as a pending action at the Land Charges Department of H.M. Land Registry on.....[insert date of registration] under Reference No.....[insert reference number] be vacated upon application duly made in that behalf by the debtor under Land Charges Rules."

6. In Form Numbered 90 in Part I of the Appendix to the Bankruptcy Rules, 1915, after the second paragraph (*b*) there shall be inserted the following paragraph :—

"*and*

"(*c*) That the registration of the receiving order in the register of Writs and Orders affecting land at the Land Charges Department of H.M. Land Registry on..... [insert date of registration] under Reference No..... [insert reference number] be vacated upon application duly made in that behalf by the debtor under Land Charges Rules.

"[*add, if so ordered*] *and*

"(*d*) That the registration of the petition as a pending action at the said Department on.....[insert date of registration] under Reference No.....[insert reference number] be vacated upon application made as aforesaid."

7. The following words shall be added at the end of Form numbered 104 in Part I of the Appendix to the Bankruptcy Rules, 1915 :—

"[*add, if so ordered*]

"And it is ordered that the registration of the petition as a pending action at the Land Charges Department of H.M. Land Registry on.....[insert date of registration] under Reference No.....[insert reference number] and of the receiving order in the register of Writs and Orders affecting land at the said Department on .....[insert date of registration] under Reference No.....[insert reference number] be vacated upon application duly made in that behalf by the debtor under Land Charges Rules."

8. These Rules may be cited as the Bankruptcy Amendment (No. 1) Rules, 1933, and shall come into operation on the 1st day of April, 1933, and the Bankruptcy Rules, 1915, as amended, shall have effect as further amended by these Rules.

Dated the 20th day of March, 1933.

Sankey, C.

I concur,

Walter Runciman,
President of the Board of Trade.

THE COMPANIES (WINDING-UP) AMENDMENT RULES, 1933, DATED MARCH 16, 1933, MADE PURSUANT TO THE COMPANIES ACT, 1929 (19 & 20 GEO. 5, C. 23).

1. The following Rule shall be inserted in the Companies (Winding-Up) Rules, 1929(*) after Rule 41 and shall stand as Rule 41A :—

"41A. For the purposes of section 269 of the Act a notice that (1) a winding-up petition has been presented, or (2) a winding-up order has been made, or (3) a provisional liquidator has been appointed, or (4) a meeting has been called at which there is to be proposed a resolution for the voluntary winding-up of the company, or (5) a resolution has been passed for the voluntary winding-up of the company, shall be in writing and shall be addressed, where the execution is in respect of a judgment of the High Court, to the Sheriff, and in any other case, to the officer charged with the execution, and may be served by being delivered by hand or by registered post, in the case of a notice to a Sheriff, at the office of the Under-Sheriff, and in any other case, at the office of the officer charged with the execution :

Provided that where a winding-up petition is presented or a winding-up order is made or a provisional liquidator is appointed in a County Court the Registrar of which is also the High Bailiff of that Court, the filing of the petition or the making of the order or the appointment of a provisional liquidator shall, for the purposes of that section, be sufficient notice to him in his capacity as High Bailiff of that Court, that the petition has been presented or the order made or the provisional liquidator appointed, as the case may be."

2. These Rules may be cited as the Companies (Winding-Up) Amendment Rules, 1933, and shall come into operation on the 18th day of April, 1933, and the Companies (Winding-Up) Rules, 1929, as amended(†), shall have effect as further amended by these Rules.

Dated the 16th day of March, 1933.

Sankey, C.

I concur,

Walter Runciman,
President of the Board of Trade.

* S.R. & O. 1914 (No. 1824) I, p. 41.

* S.R. & O. 1929 (No. 612) p. 208.

† *See* S.R. & O. 1929 (No. 1177) p. 349, 1931 (No. 70) p. 119 and 1932 (No. 802) p. 186.

SIGNING THE ROLL.

Mr. Registrar Friend, at Clerkenwell County Court last week, drew attention to the recent decision at Brentford County Court that solicitors must sign the roll of attendance at county courts. He expressed the view that the procedure was inconvenient and stupid, although it was legally correct.

Societies.

The Law Society.

RECEPTION OF PAST AND PRESENT STUDENTS.

The students of The Law Society's School of Law between the years 1931 and 1933 were received by the Principal and members of the Teaching Staff, at the Society's house, on 23rd March. The guests were entertained with a concert and a conjuring performance, both of great merit. After the first part of the programme, Mr. T. H. BISCHOFF, chairman of the Legal Education Committee, introduced Lord Tomlin, who addressed the gathering.

Lord TOMLIN said that in the fifteenth century and earlier the Inns of Court had possessed a splendid system of legal education and general culture, but legal education had fallen, from the sixteenth century almost to the present time, into depths of which every lawyer might well be ashamed. To-day, however, it was again on the upward path. Law students stood, if not on the threshold of a new era of legal education, at least not far within it. Organised instruction in legal theory and practice was steadily developing, and the study of law from the scientific standpoint was attracting more interest than ever before. They started with great advantages over those who had set out half a century before; they had better clues and better guidance and the light for them should not be so dim. Their true attitude of mind should, however, not merely be that of apprentices, but they should address themselves towards, if not the mastery, at any rate the appreciation of something which had a scientific side of immense interest and importance.

The real danger which constantly threatened any system of law was that it should ever become, either on its substantive or on its adjective side, static and inert. Every system, if it were to survive, must be a living, growing organism, continuously adjusting itself to the changing conditions of human affairs. Its ability to maintain itself as a living, growing thing depended almost entirely upon the spirit of the legal profession, in whose hands its administration and, to a large extent, its modification necessarily lay. Lawyers were not like machine-minders in a factory, whose charge was to keep running a piece of mechanism capable of doing over and over again without change one thing in a particular way. They were more nearly comparable to gardeners, whose business it was constantly to be on the watch to improve changing conditions and, by pruning here and tying up there, to secure growth in the right direction and the best possible fruiting or flowering. A lawyer, no more than a gardener, could get his best results unless he had mastered, or at any rate had a working knowledge of, the scientific side of his craft.

The vitality of the law should be displayed in two directions. The first was on its substantive side the modification, development and application of rules or principles. The second, its adjective side, was the modification of procedure to facilitate the speedy and inexpensive administration of justice. Although the legislature was nowadays chiefly responsible for changes in the law, the judges still exercised a considerable influence by processes of construction and otherwise. Changes in procedural law could be made, to a great extent, without the aid of the legislature. In both these directions the influence of the lawyer was of paramount importance and ought to be exercised, whether in the legislature, on the Bench, at the Bar or in the solicitor's office. On the procedural side of the law the solicitors' profession was the most important of all, for the solicitors were in the main the people who worked the procedural machine and best knew its merits and defects. The severest critics of lawyers recognised that they were inevitable, and that inevitability imposed upon them without any loophole of escape the duty of administering the law in all its branches so as to give effect to the spirit of the rules. To discharge that duty it was essential that the lawyer should equip himself by study in the scientific spirit. The perfect lawyer, however, was not made by the study of the law alone, but his knowledge should also be founded upon a broad base of general culture. Words were the instruments with which he had to work, and of these instruments he should be the master. Skill in their use could only come by the study of great literature. Further, the lawyer was destined to be the guide and adviser of man among the pitfalls which life presented. For that task he required the broad outlook and equitable poise of mind which could only come with a wide, general knowledge of the ways of the world and of man's activities. Some of these qualities could only be acquired with years of labour, but it was worth while for every student at an early stage to hitch his wagon to a star and treat his calling as a high one. If he did so, it would thereafter be the better for him and for the country whose law he had a hand in administering.

Among those present were Lord Tomlin and Lady Tomlin, Mr. G. R. Y. Radcliffe (the Principal) and Mrs. Radcliffe, Mr. R. A. Gordon, K.C., Mr. W. C. Cleveland Stevens, K.C., Dr. C. E. Barry (the President), Sir Reginald Poole (Vice-President) and Lady Poole, Mr. T. H. Bischoff, Mr. Ernest Bird, Mr. and Miss H. R. Blaker and Mrs. Blaker, The Master Chandler, Professor R. S. T. Chorley, Mr. E. R. Cook (Secretary of The Law Society), Professor R. A. Eastwood, Mr. and Mrs. Douglas Garrett, Dr. Clement Gatley, Mr. and Mrs. Randle Holme, Mr. and Mrs. Ingledew, Sir Alexander Lawrence, Sir Philip and Lady Martineau, Mrs. Maurice Martineau, Mr. G. D. Muggeridge, Dr. D. T. Oliver, Professor D. Hughes Parry, Mr. and Mrs. Stanley Pott, Mr. and Mrs. E. H. Salt, Sir John and Lady Stewart-Wallace, and members of the teaching staff.

Solicitors' Managing Clerks' Association.

"A RAILWAY TICKET."

Mr. Justice du Parcq took the chair at the last lecture meeting of the season held by this Association, and Mr. G. Granville Sharp delivered a lecture entitled "A Railway Ticket."

Mr. Granville Sharp explained that a railway ticket was a chattel, a receipt, and evidence of a contract. Although it was evidence that the fare had been paid, it remained the property of the issuing company, and a passenger who did not produce it when requested by an officer of the company committed an offence under the Regulation of Railways Act, 1889. Everyone was entitled to a ticket on payment unless disqualified by intoxication, contagious disease, or foul clothing. On purchasing a ticket a passenger became subject to the railway's bye-laws, which must be reasonable, exhibited publicly, and approved by the Board of Trade. He also became an invitee, but the distinction from a licensee had a merely technical effect, as the company might be liable for injury through negligence to a person lawfully on its premises who did not possess a ticket. A *de facto* passenger without a ticket who had not entered with an intention to defraud stood in the same relation to the company as though he had a ticket.

The contract evidenced by the ticket was to carry the passenger and his personal luggage for the consideration of the fare paid from place to place as set out upon the ticket, without unreasonable delay according to the company's time-tables in force for the time being. The company undertook to exercise due care in regard to the safety of the passenger's carriage and to insure his personal luggage while on its own lines, so long as the luggage remained in the control of the company or its authorised servants, both for a reasonable time before departure and a reasonable time after the arrival of a train, and subject to reasonable conditions which were brought to the notice of the passenger and, in the case of his luggage, accepted by him in writing signed by him. Although the company was an insurer of the passenger's luggage, it was not an insurer of the passenger. Personal luggage included clothing and such things as were needful for the passenger's personal use and convenience according to the habits of his class, but not for the use of other people, as when a servant travelled with his master's luggage or a passenger travelled with parcels of vegetables intended as gifts to other people. An artist's sketches, a solicitor's papers, and bedding had been held not to be personal luggage, but a travelling-rug came within the category. Articles of large value in a small compass were taken out of the responsibility of the railway by the Carriers Act, 1830, unless they were declared at the time of purchasing the ticket and an increased charge were paid or agreed to be paid.

RESPONSIBILITY FOR LUGGAGE.

The company was liable so long as the goods were in its control, and it assumed this control even if the passenger accompanied the luggage. It was for the company to prove that the passenger assumed control and that the loss was due to his neglect: *G.W.R. Co.* v. *Bunch*, 13 App. Cas. 31; *Vosper* v. *G.W.R.* [1928] 1 K.B. 340. Conditions relating to the carriage of the passenger's person were binding if the passenger had notice, and whether he had notice or not was a question of fact: *Watkins* v. *Rymill* (1883), 10 Q.B.D. 178. If the company did what was reasonable to bring conditions to the passenger's notice, the passenger was bound whether he read them or not, and whether they were reasonable or not. The company contracted only to exercise due care, and its liability depended upon negligence. The occurrence of an accident raised a presumption of negligence. A company might contract out of this liability, but only if it offered an alternative higher fare with acceptance of the liability: *Clarke* v. *West Ham Corporation* [1909] 2 K.B. 858. In *Delaney*

v. *Metropolitan Railway Co.*, 90 L.J. K.B. 721, a passenger had been thrown off his balance by the sudden starting of an electric train, and his hand had been injured in a sliding door which the jerk of starting had closed. The Court of Appeal had found the railway liable, and had held that the company owed a duty of care to the passenger even after he had entered the carriage.

The London School of Economics.

"THE INTERPRETATION OF STATUTES."

Sir Maurice Amos, K.C., delivered a lecture on this subject on 17th March, at the London School of Economics.

He said that the School's recent lectures on the interpretation of various branches of the law had given many examples of the formal and arm's length attitude which, at any rate until recently, English judges had adopted towards Parliamentary law. In English law words were things to an extent to which in Latin countries they were not. For instance, the Bills of Sale Act, 1878, required that the execution of bills of sale should be attested by a solicitor, and that the attestation should state that the solicitor had explained the nature of the instrument to the grantor. It had been held to be necessary only that the solicitor should say he had given an explanation, not that he should in fact have done so.*

Sir Maurice read s. 3 of the Wills Act, 1837, to show the frenzy of caution to which a hundred years ago draftsmen had been driven by the reign of judicial terror in which they had lived. (This section ran for about 500 words without a full-stop.) Sir Maurice supported the theory that drafts of statutes ought always to be made in two languages concurrently. Egyptian statutes were submitted early to the test of translation into French and Arabic; in England it would perhaps be more practicable to make the second language Ciceronian Latin. The long series of definitions at the beginning of a statute, of which English draftsmen were proud, caused the Italian jurist acute disgust. The device of making a statute contain its own miniature dictionary had probably not existed before George IV. With the drafting of the great "Clauses Acts" of the nineteenth century the dictionary clause had come to be regarded as indispensable. The lecturer recommended students to the Official Index of Statutory Definitions.

The main impression he had gathered from the preceding lectures on interpretation had, he said, been the inadequacy of the existing machinery for drafting. It would be possible to build up a discipline, a scientific art of drafting which would ensure that all the more plausible eventualities should be dealt with. In the construction of this science the analytical methods of thought practised in schools of law would play an important part. The new practice of entrusting the interpretation and enforcement of statutory law to administrative tribunals probably arose out of a desire of the executive government to escape from the technicalities still largely dominant in the courts. These tribunals might represent the natural response of Parliament to the unfriendly bearing of the common lawyers, a response analogous to that of the rise of the Court of Chancery. It was possible that the Lord Chief Justice was reiterating to-day, after three centuries and in not wholly dissimilar circumstances, the resentment of Lord Coke against the encroachments of the Chancellor. The Continental world had been taught by the *Corpus Juris* to look upon enacted law as the primary type. Sir Matthew Hale had said that probably much English common law had been at first statute law or Acts of Parliament. From the completion of the *Corpus Juris* in the twelfth century the French legal mind had not been hospitable to a distinction between customary and statutory law. French books of interpretation were largely philosophical rather than doctrinal. The chief reason was that Continental law was much less verbal in spirit than was English law. Continental courts attached great importance to preliminary material, e.g., reports of debates, and there existed on the Continent singularly little literature of conveyancing, or of company and other precedents. On the Continent a draftsman did not regard himself as a general preparing an attack on a hostile frontier, but as one bringing up reinforcements to an ally. Nevertheless, the appearance of a rigorous formalism in English interpretation was to some extent illusory, and several modern examples could be found of judges making a statute say what they thought it ought to have said. The rules of interpretation were far from being an inflexible machine, and there was room for the speculation that very many case reports and text-books were written, not to meet a demand for indisputable legal certainty, but to provide counsel with something to say.

**Ex parte The National Mercantile Bank* (1880), 49 L.J. Bank 62.

The Howard League for Penal Reform.

This league held a conference on "The Increase in Crime: Facts and Fallacies," at the Livingstone Hall, on 17th March. Mr. Alexander Maxwell, chairman of the first session, stated in a review of the present situation of crime that offences against the person were decreasing but that serious crime against property was slowly increasing. Miss W. A. Elkin pointed to a very small increase in crimes by persons between twenty-one and thirty, and an alarming one among adolescents between sixteen and twenty-one. Mr. F. P. Wensley, formerly Chief Constable of the C.I.D., declared that 75 per cent. of the cases of larceny, major and minor, were attributable to want of care by the public in looking after their property. Instead of talking about what should be done for the criminal, it was the bounden duty of the citizen to see that there were no criminals.

Mr. D. N. Pritt, K.C., presided at the second session, and Dr. J. R. Rees spoke on the causes and cure of crime from the psychologist's standpoint. He suggested that the commonest cause of crime was a sense of deprivation both of material things and of opportunities. The bulk of the criminal problem was presented by backward persons in whom the urge for self-completion was comparatively great. He advocated instruction in self-understanding and looked to the spread of child guidance to eliminate crime. If prisons could be looked upon as a sort of nursing home, a big step towards the solution would have been taken. Mr. B. L. Q. Henriques, speaking from the social worker's standpoint, said that young offenders looked upon probation as a "let-off," a definitely injurious attitude. The probation officer had far too vast a field to be the superviser and friend he ought to be. The futility of short sentences was shown by their increase. He advocated that every young person should be taught a trade and should belong to some organisation such as the Scouts and the Boys' Brigade.

The Hardwicke Society.

An inter-societies debate with the United Law Society was held in the Middle Temple Common Room on Friday, 24th March. The President (Mr. Vyvyan Adams, M.P.) took the chair at 8.23 p.m. In public business, Mr. F. A. P. Rowe moved "That society should not deprecate companionate marriage." Mr. L. F. Stemp opposed. Mr. H. G. Suddards spoke third and Mr. R. W. Bell spoke fourth. There spoke to the motion, Mr. Granville Sharp (ex-President), Mr. Menzies, Mr. Barman, Mr. Ricardo, Mr. Mayers, Prince Lieven, Dr. Slot, Mr. O'Brien; and the hon. proposer in reply. On a division the motion was lost by five votes.

Legal Notes and News.

Honours and Appointments.

The King has been pleased, on the recommendation of the Secretary of State for Scotland, to appoint Mr. Alexander Rae to be Clerk of Justiciary in Scotland, in the room of Mr. John Robert Dickson, K.C., appointed to be Sheriff of Argyll.

The Board of Trade have appointed Mr. Reginald Betts, Official Receiver in Bankruptcy at Newcastle-on-Tyne, to be Official Receiver in Bankruptcy at Cardiff as from the 1st April, 1933.

Mr. E. B. Nichols, solicitor, of Cannon-street, E.C., has been appointed Clerk to the Horners' Company in succession to the late Mr. T. Howard Deighton.

Professional Announcements.

(2s. per line.)

Tozer, Dell & Edwards, of Teignmouth, Devon, and Whidborne, Cole & McMurtrie, of Dawlish, Devon, have amalgamated as from the 1st April, 1933. The combined practice will be carried on at Teignmouth and Dawlish under the style of Tozer, Edwards & McMurtrie.

The Solicitors' Mortgage Society, Ltd. (formed by Solicitors for Solicitors), invites particulars of Funds or Securities. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Edmund Salwey Ford, barrister-at-law, of Hyde Park-square, W., left £68,221, with net personalty £59,360.

Mr. Robinson Fooks Gibson, barrister-at-law, of Borden, Kent, left £32,015, with net personalty £30,520.

Mr. Arthur Henry Lemon, C.M.G., barrister-at-law, of Reigate, left £5,820, with net personalty £2,041.

Mr. James John Chapman, solicitor, of Gray's Inn-square, left £10,218, with net personalty, £6,220.

Mr. Thomas Reveley, solicitor, of Fulwood, Lancs, left £29,493, with net personalty, £25,205.

Mr. Charles Wallis Berkeley-Calcott, solicitor, of Leighton Buzzard, left £10,102, with net personalty £8,136.

Mr. William Edwin Booth, solicitor, of Bishop Auckland, left £6,786, with net personalty, £4,200.

DOCUMENTS IN APPEALS FROM COUNTY COURTS.

During the hearing of an appeal last Tuesday to a Divisional Court (Mr. Justice Acton and Mr. Justice Goddard), Mr. Justice Acton stated, says *The Times*, that their Lordships desired publicity to be given to the fact that they were depriving the successful appellant of his costs because his solicitor had failed to supply the court with copies of the correspondence and other relevant documents. It had been necessary to decide the case by reference to newspaper reports and the recollection of counsel, and most of the material on which the appellant had relied had been supplied to him by the courtesy of the respondent. No application had been made to the county court judge to take a note, and in the circumstances, although the appeal must be allowed, no order as to costs would be made.

TRIAL BY JURY ABOLISHED IN AUSTRIA.

The Austrian Government promulgated a decree on Friday, 24th March, suppressing trials by jury. In future a judge with either three or six lay judges acting as jurymen will try cases hitherto triable by jury. Any verdict brought in by the lay judges which appears not to be in accord with the law will be considered by the Supreme Court, which may order a second trial before a new court, whose verdict will be final.

The Solicitors' Law Stationery Society, Limited

The report of The Solicitors' Law Stationery Society, Limited, states that sales for the year 1932 were slightly less than in 1931, but the profit for the year amounted to £38,849 against £38,501 in 1931. The available balance amounts to £49,429, and the directors recommend that a dividend of 9 per cent., less income tax, be paid for the year (same).

As the dividend exceeds 3 per cent., a bonus is distributable under the articles of association amongst solicitors whose accounts with the Society during the year exceeded £50. A bonus is also payable to the staff under the profit-sharing scheme.

The dividend and bonuses absorb the sum of £33,637, and out of the balance the directors propose to write off £3,071 appearing in the balance sheet as businesses purchased; to add £2,500 to reserve (same); leaving £10,222 to be carried forward.

In November the Society took over the ownership and publication of *Rating and Income Tax*.

The annual meeting will be held at 102-7, Fetter-lane, E.C.4, on Tuesday, 4th April, at 12 noon.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part II.	MR. JUSTICE MAUGHAM. Witness. Part I.
M'nd'y April 3	Mr. Andrews	Mr. Blaker	Mr.*Andrews	Mr.*More
Tuesday .. 4	Jones	More	More	*Ritchie
Wednesday. 5	Ritchie	Hicks Beach	*Ritchie	*Andrews
Thursday . 6	Blaker	Andrews	Andrews	*More
Friday 7	More	Jones	*More	Ritchie
Saturday .. 8	Hicks Beach	Ritchie	Ritchie	Andrews

DATE.	GROUP I. MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
M'nd'y April 3	Mr. Ritchie	Mr.*Jones	Mr. Hicks Beach	Mr. Blaker
Tuesday .. 4	Andrews	*Hicks Beach	Blaker	*Jones
Wednesday 5	More	*Blaker	Jones	Hicks Beach
Thursday . 6	Ritchie	Jones	Hicks Beach	*Blaker
Friday 7	Andrews	*Hicks Beach	Blaker	Jones
Saturday .. 8	More	Blaker	Jones	Hicks Beach

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 6th April, 1933.

	Div. Months.	Middle Price 29 Mar. 1933.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	109¾	3 12 11	3 7 11
Consols 2½%	JAJO	76¾	3 5 1	—
War Loan 3½% 1952 or after ..	JD	101½	3 9 0	3 7 10
Funding 4% Loan 1960-90	MN	111¼xd	3 11 9	3 7 0
Victory 4% Loan (Available for Estate Duty at par) Av. life 29 years	MS	110¼	3 12 7	3 8 9
Conversion 5% Loan 1944-64 ..	MN	116¼xd	4 5 10	3 4 0
Conversion 4½% Loan 1940-44 ..	JJ	111¼	4 0 11	2 14 3
Conversion 3½% Loan 1961 or after ..	AO	100⅓	3 9 8	3 9 5
Conversion 3% Loan 1948-53 ..	MS	99	3 0 7	3 1 4
Local Loans 3% Stock 1912 or after..	JAJO	89	3 7 5	—
Bank Stock	AO	336¼xd	3 11 4	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	79½	3 9 2	—
India 4½% 1950-55	MN	110	4 1 10	3 13 11
India 3½% 1931 or after	JAJO	88	3 19 7	—
India 3% 1948 or after	JAJO	76	3 18 11	—
Sudan 4½% 1939-73	FA	111	4 1 1	2 10 0
Sudan 4½% 1974 Red. in part after 1950	MN	109	3 13 5	3 6 7
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3 0 0	3 0 0
COLONIAL SECURITIES				
*Australia (Commonw'th) 5% 1945-75	JJ	108	4 12 7	4 2 9
*Canada 3½% 1930-50	JJ	100	3 10 0	3 10 0
*Cape of Good Hope 3½% 1929-49 ..	JJ	101	3 9 4	—
Natal 3% 1929-49	JJ	96	3 2 6	3 6 5
New South Wales 3½% 1930-50 ..	JJ	96	3 12 11	3 16 5
*New South Wales 5% 1945-65 ..	JD	108	4 12 7	4 3 9
New Zealand 4½% 1948-58	MS	108	4 3 4	3 15 10
*New Zealand 5% 1946	JJ	110	4 10 11	4 0 0
Nigeria 5% 1950-60	FA	114	4 7 9	3 17 2
*Queensland 4% 1940-50	AO	100	4 0 0	4 0 0
*South Africa 5% 1945-75	JJ	112	4 9 3	3 14 9
*South Australia 5% 1945-75 ..	JJ	108	4 12 7	4 2 9
*Tasmania 3½% 1920-40	JJ	100	3 10 0	3 10 0
Victoria 3½% 1929-49	AO	96	3 12 11	3 16 10
*W. Australia 4% 1942-62	JJ	101	3 19 2	3 17 2
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	86	3 9 9	—
Birmingham 4½% 1948-68	AO	114	3 18 11	3 6 0
*Cardiff 5% 1945-65	MS	110	4 10 11	3 18 9
Croydon 3% 1940-60	AO	93	3 4 6	3 8 0
*Hastings 5% 1947-67	AO	113	4 8 6	3 15 8
Hull 3½% 1925-55	FA	99	3 10 8	3 11 4
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	99	3 10 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	74	3 7 7	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	88	3 8 2	—
Manchester 3% 1941 or after ..	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	94	2 13 2	2 19 7
Metropolitan Water Board 3% "A" 1963-2003	AO	90	3 6 8	3 7 6
Do. do. 3% "B" 1934-2003 ..	MS	91	3 5 11	3 6 8
Do. do. 3% "E" 1953-73 ..	JJ	94½	3 3 6	3 5 0
*Middlesex C.C. 3½% 1927-47 ..	FA	101	3 9 4	—
Do. do. 4½% 1950-70	MN	114	3 18 11	3 8 10
Nottingham 3% Irredeemable ..	MN	87	3 9 0	—
*Stockton 5% 1946-66	JJ	113	4 8 6	3 14 4
ENGLISH RAILWAY PRIOR CHARGES				
Gt. Western Rly. 4% Debenture ..	JJ	102½	3 18 1	—
Gt. Western Rly. 5% Rent Charge ..	FA	115½	4 6 7	—
Gt. Western Rly. 5% Preference ..	MA	72½	6 18 0	—
‡L. & N.E. Rly. 4% Debenture ..	JJ	83½	4 15 10	—
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	67½	5 18 6	—
London Electric 4% Debenture ..	JJ	103½	3 17 4	—
‡L. Mid. & Scot. Rly. 4% Debenture..	JJ	93½	4 5 7	—
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	76½	5 4 7	—
Southern Rly. 4% Debenture ..	JJ	102½	3 18 1	—
Southern Rly. 5% Guaranteed ..	MA	106½	4 13 11	—
Southern Rly. 5% Preference ..	MA	81½	6 2 8	—

*Not available to Trustees over par.

†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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